COUNCIL IMPLEMENTING DECISION (EU) 2023/1552

of 25 July 2023

amending Implementing Decision (EU) 2017/784 as regards the period of authorisation for, and the scope of, the special measure derogating from Articles 206 and 226 of Directive 2006/112/EC on the common system of value added tax taken by Italy

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

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Implementing Decision (EU) 2015/1401 ([2]), Italy was authorised, until 31 December 2017, to require that value added tax (VAT) due on supplies to public authorities was to be paid by those authorities to a separate and blocked bank account of the tax authorities (the 'special measure'). The special measure constituted a derogation from Articles 206 and 226 of Directive 2006/112/EC in relation to VAT payment and invoicing rules.

(2) By Council Implementing Decision (EU) 2017/784 ([3]), Italy was authorised to apply the special measure until 30 June 2020 and the scope of the special measure was broadened to include supplies to certain companies controlled by public authorities and to companies listed on the stock exchange that are included in the Financial Times Stock Exchange Milano Indice di Borsa ('FTSE MIB') index. The special measure was subsequently extended until 30 June 2023 by Council Implementing Decision (EU) 2020/1105 ([4]).

(3) By letter registered with the Commission on 26 September 2022, Italy requested an authorisation to continue to apply the special measure until 31 December 2026. By letter registered with the Commission on 8 May 2023, Italy requested that, from 1 July 2025, the scope of the special measure be restricted to supplies of goods and services to public authorities and to certain companies controlled by public authorities.

(4) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Italy to the other Member States by letter dated 11 May 2023. By letter dated 12 May 2023, the Commission notified Italy that it had all the information necessary for the appraisal of the request.

(5) The special measure is part of a package of measures introduced by Italy in order to counter tax fraud and evasion. That package of measures, including mandatory electronic invoicing authorised by Council Implementing Decision (EU) 2018/593 ([5]), has replaced other control measures and allows the Italian tax authorities to cross-check different operations declared by taxable persons and to monitor their VAT payments.

([1]) OJ L 347, 11.12.2006, p. 1.
([2]) OJ L 217, 18.8.2015, p. 7.
([3]) OJ L 118, 6.5.2017, p. 17.
([4]) OJ L 242, 28.7.2020, p. 4.
([5]) Council Implementing Decision (EU) 2018/593 of 16 April 2018 authorising the Italian Republic to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax (OJ L 99, 19.4.2018, p. 14).

(6) Italy considers that, in the context of the package of measures implemented, mandatory electronic invoicing reduces the time needed by the tax authorities to become aware of the existence of a potential case of tax fraud or evasion. However, Italy also considers that, in the absence of the split payment mechanism introduced by the special measure, the recovery of VAT amounts due from taxable persons engaged in tax fraud or evasion might be impossible after the cross-check has been carried out because, in the meantime, those taxable persons might have become insolvent. Thus, the split payment mechanism, as an *ex ante* measure, has proved to be highly effective and complementary to mandatory electronic invoicing, which is an *ex post* measure.

(7) Italy repeatedly committed itself not to seek the renewal of the special measure after a full implementation of the package of measures. However, Italy considers that, given the effectiveness of the special measure and its synergies with other applied measures, in particular with mandatory electronic invoicing, the special measure should be extended to avoid a setback in the efforts made to reduce the the overall difference between the expected VAT revenue and the amount actually collected in Italy. Nevertheless, in order to honour its commitment to gradually phase out the special measure, Italy modified its request to exclude from the scope of the special measure, from 1 July 2025, supplies of goods and services to companies listed on the stock exchange that are included in the FTSE MIB index. That timeframe will allow taxable persons affected by the restriction of the scope of the special measure to make the appropriate operational adjustments. It will also allow the Italian tax authorities to monitor the effectiveness of the special measure and adequately evaluate possible alternative measures.

(8) One of the effects of the special measure is that suppliers, being taxable persons, are not able to offset the VAT paid on their input with the VAT received on their supplies. Such suppliers can be constantly in a credit position and might need to ask for an effective refund of the VAT paid on their input from the tax authorities. According to the information provided by Italy, taxable persons carrying out transactions subject to the special measure are entitled to receive payment of the relevant VAT credits as a priority, within the limit of the credit deriving from such transactions. That practice implies that refund requests related to the special measure are processed as a matter of priority both during the preliminary investigation phase and when amounts due from non-priority refunds are paid.

(9) The requested further extension of the authorisation to apply the special measure should be limited in time to allow an assessment to be carried out as to whether the special measure is appropriate and effective. The authorisation to apply the special measure should therefore be extended until 30 June 2026. That would give sufficient time to assess the effectiveness of the measures implemented by Italy aimed at reducing tax evasion in the sectors concerned.

(10) To guarantee the necessary follow-up within the framework of the special measure and in particular to assess the impact on VAT refunds to taxable persons covered by the special measure, Italy should be required to submit a report to the Commission by September 2024. That report should address the overall situation of, and in particular the average time needed for, VAT refunds to taxable persons, and the effectiveness of the special measure and any other measures implemented by Italy with the aim of reducing tax evasion in the sectors concerned. That report should also include a list of those measures, together with their date of entry into force.

(11) The special measure is proportionate to the objectives pursued since it is limited in time and restricted to sectors which pose considerable risks with respect to tax evasion. In addition, the special measure does not create a risk that tax evasion would shift to other sectors or to other Member States.

(12) The special measure 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.

(13) In order to ensure that the objectives pursued by the special measure are achieved, including the uninterrupted application of the special measure, and to provide legal certainty with regard to the tax period, it is appropriate to grant an authorisation to extend the special measure with effect from 1 July 2023. As Italy requested authorisation on 26 September 2022 to continue to apply the special measure and has continued to apply the legal regime established in its national law on the basis of Implementing Decision (EU) 2017/784 from 1 July 2023, the legitimate expectations of the persons concerned are duly respected.

(14) Implementing Decision (EU) 2017/784 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Council Implementing Decision (EU) 2017/784 is amended as follows:

(1) in Article 1, the third indent is deleted;

(2) in Article 3, second paragraph, the date '30 September 2021' is replaced by the date '30 September 2024';

(3) in Article 5, the date '30 June 2023' is replaced by the date '30 June 2026'.

Article 2

This Decision shall take effect on the date of its notification.

However, Article 1, point (1), shall apply from 1 July 2025.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 25 July 2023.

For the Council
The President
L. PLANAS PUCHADES