II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 19 July 1988

authorizing the Kingdom of the Netherlands to apply a measure derogating from Article 21 (1) (a) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes

(88/498/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax : uniform basis of assessment [1], hereinafter referred to as the 'Sixth Directive', and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive, the Council may authorize any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance ;

Whereas the Kingdom of the Netherlands, by letter addressed to the Commission and registered on 18 April 1988, requested authorization to introduce a special measure derogating from the Sixth Directive ;

Whereas the other Member States were informed on 17 May 1988 of the request made by the Kingdom of the Netherlands ; whereas the Council's decision shall be deemed to have been adopted if, within two months of the other Member States being informed, neither the Commission nor any Member State has requested that the matter be raised by the Council ; whereas no such request has been made ; whereas the Council's decision shall thus be deemed to have been adopted on 19 July 1988 ;

Whereas the Kingdom of the Netherlands makes use of the possibility provided by Article 13 (C) (b) of the Sixth Directive of granting a right of option for taxation of the supply of old buildings and of land which has not been built on ;

Whereas the exercise of the option for taxation of these supplies leads in certain cases to tax evasion and avoidance ;

Whereas, in order to prevent such tax evasion and avoidance, the Kingdom of the Netherlands wishes to introduce into its legislation a provision to the effect that, where that option is exercised, liability for the tax is imposed on the purchaser ;

Whereas the measure envisaged is a derogation from Article 21 (1) (a) of the Sixth Directive, whereby, under the internal system, the person liable for the tax is the taxable person who carries out the taxable transaction ;

Whereas the derogation will habe a favourable effect on the European Communities' own resources arising from value added tax,

[1] OJ No L 145, 13. 6. 1977, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

Notwithstanding Article 21 (1) (a) of the Sixth Directive, the Kingdom of the Netherlands is hereby authorized to apply, in the context of the option for taxation provided for by Article 13 (C) (b) ofg that Directive and in relation to the transactions mentioned in section B (g) and (h) of that Article, a provision imposing liability for the tax on the purchaser.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 19 July 1988.

For the Council

The President

Y. POTTAKIS