II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 11 April 1989

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

(89/533/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), as last amended by the Act of Accession of Spain and Portugal, 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 acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from the provisions of that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance ;

Whereas the United Kingdom was authorized by a Council Decision deemed to have been adopted on 14 April 1987, in accordance with the procedure laid down by Article 27 (4) of the Sixth Directive, to introduce, for a period of two years from 1 April 1987, a derogation measure to combat tax avoidance ;

Whereas the purpose of that measure is to prevent groups of businesses which are treated as a single taxable person within the meaning of Article 4 (4) of the Sixth Directive and are not entitled to deduct tax in full from being able to enjoy full deduction of the tax on certain transfers of assets ;

Whereas to prevent tax avoidance of this type the United Kingdom applies a legislative provision laying down that the company to which such assets are transferred becomes liable to tax ;

Whereas the said measure constitutes 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 United Kingdom has, by a letter registered at the Commission on 9 January 1989, requested authorization to extend the said measure by one year pending adoption of other provisions to be based on Article 20 of the Sixth Directive ;

Whereas the other Member States were informed on 9 February 1989 of the request made by the United Kingdom ; whereas the Council's Decision is deemed to have been adopted if, within two months of the other Member States being informed, neither the Commission nor any Member State 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 is thus deemed to have been adopted on 11 April 1989 ;

Whereas the said derogation measure will have 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

By way of derogation from the provisions of Article 21 (1) (a) of the Sixth Directive 77/388/EEC, the United Kingdom is hereby authorized to apply until 31 March 1990 a provision whereby, when assets are totally or partially transferred to a company which is a member of a group of businesses treated as a single taxable person within the meaning of Article 4 (4) of the said Directive and which is not entitled to full deduction of tax, the company to which the assets are transferred becomes liable for tax.

Article 2

This Decision is addressed to the United Kingdom.

Done at Luxembourg, 11 April 1989.

For the Council

The President

C. SOLCHAGA CATALAN