COUNCIL DECISION

of 12 March 1990

authorizing the United Kingdom to apply a measure derogating from Articles 5 (8) and 21 (1) (a) of the Sixth Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax : uniform basis of assessment

(90/127/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 Eighteenth Directive (89/465/EEC) [2], and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive (77/388/EEC), the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive in order to simplify the procedure for changing the tax or to prevent certain types of tax evasion of avoidance ;

Whereas the United Kingdom was authorized by 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 (77/388/EEC), to introduce, for a period of two years from 1 April 1987, a derogation aimed at combating tax avoidance ;

Whereas the United Kingdom was authorized by Council Decision, deemed to have been adopted on 11 April 1989, to extend that derogation until 31 March 1990 ;

Whereas, by letter dated 29 November 1989 and received by the Commission on 1 December 1989, the United Kingdom requested authorization to extend the derogation until 31 December 1992 but at the same time to limit its scope ;

Whereas the other Member States were informed on 27 December 1989 of the Unted Kingdom's request ;

Whereas the purpose of the derogation is to prevent groups of enterprises which are treated as a single taxable person within the meaning of Article 4 (4) of the Sixth Directive (77/388/EEC) and which are not entitled to deduct tax in full from being able to benefit from full deduction of the tax on certain transfers of assets made in the United Kingdom under Article 5 (8) of the said Directive ;

Whereas, to prevent tax avoidance of this type, the United Kingdom applies a legislative provision stipulating that the transfer of assets to a member company of a VAT group is not wholly liable to tax is to be treated as a supply within the meaning of the Sixth Directive (77/388/EEC), with the result that the person liable for the tax is then the recipient of the transferred assets and not the taxable person who carries out the taxable transaction ;

Whereas the United Kingdom will henceforth limit the scope of the abovementioned derogation in view of the introduction, on 1 April 1990, of a scheme for the adjustment of VAT deductions initially made in respect of certain capital goods, based on Article 20 (2) of the Sixth Directive (77/388/EEC) ;

Whereas, under Article 5 (8) of the said Directive, Member States may, in the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, consider that no supply of goods has taken place and that the recipient is to be treated as the successor to the transferor ;

Whereas the United Kingdom makes general use of the option provided for in Article 5 (8) of the Sixth Directive (77/388/EEC) ;

Whereas, therefore, the measure planned by the United Kingdom derogates from Article 5 (8) of the said Directive in that a supply is deemed to take place where part of a totality of assets is transferred to a company which, as a member of a group of enterprises which are treated as a single taxable person within the meaning of Article 4 (4) of the said Directive, is not entitled to deduct tax in full ;

Whereas the measure planned by the United Kingdom also constitutes a derogation from Article 21 (1) (a) of the Sixth Directive (77/388/EEC), according to which, under the internal system, the person liable for the tax is the taxable person who carries out the taxable transaction ;

[1] OJ No L 145, 13. 6. 1977, p. 1.
[2] OJ No L 226, 3. 8. 1989, p. 21.

Whereas the derogation will have a favourable effect on the European Communities' own resources arising from value-added tax (VAT),

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Articles 5 (8) and 21 (1) (a) of the Sixth Directive (77/388/EEC), the United Kingdom is hereby authorized to apply until 31 December 1992:

— a provision whereby a supply of goods is deemed to occur where assets other than the capital goods subject to adjustment of the deductions initially made pursuant to legislation adopted by the United Kingdom on the basis of Article 20 of the Sixth Directive (77/388/EEC) are totally or partially transferred to a company which is a member of a group of enterprises treated as a single taxable person within the meaning of Article 4 (4) of the said Directive and which, as a member of that group, is not entitled to deduct tax in full;

— a provision whereby the company which is the recipient of the supply of assets referred to in the first indent becomes liable to tax.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 12 March 1990.

For the Council

The President

A. REYNOLDS