II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 5 April 1993

authorizing the United Kingdom to apply a measure derogating from Articles 5 (8) and 21 (1) (a) of the Sixth Council Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(93/204/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], and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas pursuant to Article 27 (1) of 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 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 Decision 90/127/EEC [2], in accordance with the procedure laid down in Article 27 (1) to (4) of Directive 77/388/EEC to apply a measure derogating from Articles 5 (8) and 21 (1) (a) of the said Directive ;

Whereas the United Kingdom, by means of a letter dated 16 November 1992 and received by the Commission on 18 November 1992, requested authorization to extend the said derogation until 31 December 1996 ;

Whereas the other Member States were informed on 18 December 1992 of the United 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 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 pursuant to Article 5 (8) of that Directive ;

Whereas pursuant to Article 5 (8) of Directive 77/388/EEC 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 the said Article 5 (8) ;

Whereas, therefore, the measure planned by the United Kingdom derogates from the said Article 5 (8) in that a supply is deemed to take place where part of a totality of

[1] OJ No L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 92/111/EEC (OJ No L 384, 31. 12. 1992, p. 47).
[2] OJ No L 73, 20. 3. 1990, p. 32.

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 that Directive, is not entitled to deduct tax in full;

Whereas the measure planned by the United Kingdom also constitutes a derogation form Article 21 (1) (a) of 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;

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

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Articles 5 (8) and 21 (1) (a) of Directive 77/388/EEC, the United Kingdom is hereby authorized to apply until 31 December 1996:

— 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 said Directive, 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 that 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 Luxembourg, 5 April 1993.

For the Council

The President

N. HELVEG PETERSEN