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COUNCIL DECISION

of 24 July 1997

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

(97/510/EC)

(OJ L 214, 6.8.1997, p. 37)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Decision 2000/435/EC of 29 June 2000	L 172	24	12.7.2000
►**M2**	Council Decision 2003/857/EC of 25 November 2003	L 324	36	11.12.2003

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

(97/510/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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, under the terms of 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, by registered letter to the Commission dated 5 February 1997, Ireland requested authorization to introduce a measure derogating from Article 21 (1) of Directive 77/388/EEC;

Whereas, in accordance with Article 27 (3) of Directive 77/388/EEC, the other Member States were informed on 4 March 1997 of the request made by Ireland;

Whereas Ireland operates a specific system of applying VAT to property based, on the one hand, on the option under Article 5 (3) of Directive 77/388/EEC to treat the supply of certain interests (i.e. a lease of 10 years or more) in immovable property as a supply of goods and, on the other hand, on a derogation authorized under Article 27 (5) to treat the granting of such an interest by a lessor as a disposal of the lessor's entire interest in the property;

Whereas Community law gives Member States a great deal of discretion in determining the VAT treatment to be applied to immovable goods, and its transposition has led to considerable variations in the national laws applied in this field;

Whereas avoidance schemes have been set up, based on the use of surrender, including by way of abandonment of a leasehold interest or assignment of a leasehold interest, which result in the avoidance of the VAT where the ultimate acquirer of the property is not entitled to a full deduction of VAT;

Whereas it is also necessary to extend the derogation to the surrender or assignment of a leasehold interest to a taxable person having full right of deduction, as the surrender or the assignment of a leasehold interest will often arise due to financial difficulties of the lessee;

Whereas the measure envisaged is a derogation from Article 21 (1) (a) of Directive 77/388/EEC, whereby the person liable for the tax is the taxable person who carries out the taxable transaction;

Whereas the derogation provides that, where a surrender or assignment of a lease-hold interest is a taxable supply of goods, the person acquiring the interest is liable for the payment of the tax if that person is a taxable person or a non-taxable legal person;

Whereas this derogation should ensure a better functioning of the current VAT regime applied by Ireland on immovable goods;

([1]) OJ No L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 96/95/EC, OJ No L 338, 28. 12. 1996, p. 89.

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Whereas, given the limited scope of the derogation, the special measure is proportionate to the aim pursued;

Whereas there exists a serious risk that use of the said VAT avoidance scheme will increase in the period between the request for a derogation and the authorization thereof; whereas at the latest since the publication on 26 March 1997 of the draft legislation which is the subject of the present request for a derogation, suppliers, lessors and lessees of property have no longer had a legitimate expectation of the continuation of the Irish legislation in force before that date; whereas it is therefore appropriate to authorize the derogation to take effect from 26 March 1997;

Whereas the Commission adopted on 10 July 1996 a work programme based on a step-by-step approach for progressing towards a new common system of VAT;

Whereas the tax treatment of immovable goods is an important issue to be reviewed in this programme;

Whereas the last package of proposals is to be put forward by mid-1999 and, in order to permit an evaluation of the coherence of the derogation with the global approach of the new common VAT system, the authorization is granted until 31 December 1999;

Whereas the derogation does not have a negative impact on the own resources of the European Communities accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 21 (1) (a) of Directive 77/388/EEC, Ireland is hereby authorized, from 26 March 1997 until ►**M2** 31 December 2007 ◄, to designate the person to whom the supply is made as the person liable to pay the tax where the two following conditions are met:

— a surrender or assignment of a leasehold interest is treated as a supply of goods made by a lessee,

— the person acquiring the leasehold interest is a taxable person or a non-taxable legal person.

Article 2

This Decision is addressed to Ireland.