COUNCIL DECISION

of 16 February 1998

authorising the Kingdom of the Netherlands to apply a measure derogating from Articles 2 and 28a(1) of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(98/161/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 harmonisation of the laws of the Member States relating to turnover taxes: common system of value added tax, uniform basis for 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 authorise 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 and avoidance;

Whereas, by letter registered at the Commission on 9 June 1997, the Kingdom of the Netherlands requested authorisation to introduce a measure derogating from Articles 2 and 28a(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 10 September 1997 of the request submitted by the Kingdom of the Netherlands;

Whereas that special measure provides, firstly, for exemption of the supply and intra-Community acquisition of used and waste materials, with the exception of non-ferrous metals, in the case of taxable entities with an annual turnover of less than NLG 2,5 million and, secondly, for exemption of the supply and intra-Community acquisition of non-ferrous metals;

Whereas the taxable persons whose transactions are covered by the above exemptions may, subject to the conditions laid down by the Kingdom of the Netherlands, be authorised not to apply that measure to their transactions;

Whereas the measure both simplifies matters and helps to combat fraud since a category of taxable persons where checks and efforts at collection would be disproportionate to the revenue generated can be excluded from the VAT system;

Whereas, consequently, the special measure satisfies the conditions laid down in Article 27 of Directive 77/388/EEC;

Whereas the Commission adopted on 10 July 1996 a work programme, together with a timetable, for the phased introduction of a common system of VAT for the internal market;

Whereas authorisation is being granted until 31 December 1999 so that an assessment can then be made of the compatibility of the derogation measure with the overall approach adopted for the new common system of VAT;

Whereas this derogation will not have an adverse impact on the Community's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of the Netherlands is hereby authorised until 31 December 1999 to apply a special measure for the taxation of used and waste materials that contains provisions derogating from Directive 77/388/EEC.

The provisions in question are laid down in Articles 2, 3 and 4 of this Decision.

Article 2

By way of derogation from Article 2 of Directive 77/388/EEC, the following shall be exempt from VAT:

— the supply of used and waste materials by firms with an annual turnover of less than NGL 2,5 million. For the purposes of that threshold, turnover in non-ferrous metals may be disregarded,

— the supply of non-ferrous metals.

[1] OJ L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 96/95/EC (OJ L 338, 28. 12. 1996, p. 89).

Article 3

By way of derogation from Article 28a(1)(a) of Directive 77/388/EEC, the following shall be exempt from VAT:

— the intra-Community acquisition of used and waste materials by firms with an annual turnover of less than NGL 2,5 million. For the purposes of that threshold, turnover in non-ferrous metals may be disregarded,

— the intra-Community acquisition of non-ferrous metals.

Article 4

Taxable entities carrying out transactions which are exempt pursuant to Articles 2 and 3 above may be authorised not to make supplies and intra-Community acquisitions of used and waste materials effected by them subject to the special measure provided for by this Decision.

Article 5

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 16 February 1998.

For the Council

The President

G. BROWN