COUNCIL DECISION

of 18 January 1999

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

(1999/81/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 with the Commission on 23 January 1998, the Kingdom of Spain 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 18 February 1998 of the request submitted by the Kingdom of Spain;

Whereas the first purpose of the special measure is to exempt the supply and intra-Community acquisition of used and waste materials consisting of paper, board or glass, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 50 million;

Whereas the second purpose of the measure is to exempt the supply and intra-Community acquisition of used and waste material consisting of ferrous metals, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 200 million;

Whereas the third purpose of the measure is to exempt the supply and intra-Community acquisition of non-ferrous metals, irrespective of the turnover for sales of such goods;

Whereas traders are not entitled to deduct VAT in respect of transactions exempted under these special measures;

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

Whereas this 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 single market;

Whereas authorisation should be granted until 31 December 2000 so that an assessment can then be made of the compatibility of the measure with the overall approach adopted for the new common system of VAT;

Whereas this derogation will have no impact on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Spain is hereby authorised from 1 January 1999 until 31 December 2000 to apply a special measure for the taxation of used and waste materials that contains provisions derogating from Directive 77/388/EEC of 17 May 1977.

The provisions in question are laid down in Articles 2, 3 and 4 below.

[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 2

By way of derogation from Article 2(1) of Directive 77/388/EEC, the following shall be exempt from VAT:

— the supply of used and waste materials consisting of paper, board or glass, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 50 million,

— the supply of used and waste materials consisting of ferrous metals, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 200 million,

— the supply of non-ferrous metals.

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 consisting of paper, board or glass, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 50 million,

— the intra-Community acquisition of used and waste materials consisting of ferrous metals, in the case of taxable persons whose sales of such products in the previous year were worth not more than PTA 200 million,

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

Article 4

Taxable persons whose transactions come within the scope of the exemptions laid down in Articles 2 and 3 may be authorised not to subject such supplies and intra-Community acquisitions to the particular arrangements laid down in this Decision.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 18 January 1999.

For the Council

The President

O. LAFONTAINE