II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 20 March 2000

authorising the Kingdom of the Netherlands to apply a measure derogating from Article 11 of the Sixth Directive (77/388/EEC) on the harmonisation of the laws of Member States relating to turnover taxes

(2000/256/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 Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [1] (hereinafter referred to as the 'Sixth VAT Directive'), and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In a letter registered by the Secretariat—General of the Commission on 1 September 1999, the Government of the Kingdom of the Netherlands requested authorisation on the basis of Article 27 of the Sixth VAT Directive, to apply a measure derogating from Article 1(A)(1)(a) thereof.

(2) Under Article 27(1) of the Sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of the Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

(3) In accordance with Article 27, the other Member States were informed of the request from the Kingdom of the Netherlands by letter of 28 October 1999.

(4) Article 11(A)(1)(a) of the Sixth VAT Directive states that, in principle, the taxable amount in respect of supplies of goods and services is to be everything which constitutes the consideration which has been or is to be obtained by the supplier for such supplies from the purchaser, the customer or a third party.

(5) By way of derogation from these provisions, the Kingdom of the Netherlands has requested authorisation to include in the taxable amount for transactions involving the working of investment gold the value of the raw material provided by the purchaser and used to make the finished product.

[1] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 1999/85/EC (OJ L 277, 28.10.1999, p. 34).

(6) The aim of the derogation is to avoid abuse of the exemption for investment gold and thus to prevent certain types of tax evasion or avoidance; it therefore meets the conditions set out in Article 27 of the Sixth VAT Directive.

(7) The forms of tax evasion or avoidance in question consist mainly of the purchase of VAT-exempt investment gold which is then worked to make jewellery or other goods, with VAT not being charged on the value of the investment gold included in the outgoing transaction.

(8) The derogation will expire on 31 December 2004, so that an assessment can then be made as to whether it is appropriate in the light of changes in the practical application of the special scheme for investment gold established by Directive 98/80/EC [1].

(9) The derogation will have no negative impact on the European Communities' own resources provided from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of the Netherlands is hereby authorised, by derogation from Article 11(A)(1)(a) of the Sixth VAT Directive, to include in the taxable amount in respect of the supply of goods or services involving the working of non-taxed investment gold the value of the gold contained in the finished product, based on the current market value of the investment gold.

Article 2

The authorisation granted under Article 1 shall expire on 31 December 2004.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 20 March 2000.

For the Council
The President
J. GAMA

[1] OJ L 281, 17.10.1998, p. 31.