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COUNCIL DECISION

of 24 January 2000

authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a measure derogating from Article 17 of the Sixth Council Directive (77/338/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes

(2000/91/EC)

(OJ L 28, 3.2.2000, p. 38)

Amended by:

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(2000/91/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 1997 on the harmonisation 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:

(1) under 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 or extend special measures derogating from the provisions of the Directive to simplify the procedure for charging the tax or prevent certain types of tax evasion or avoidance;

(2) the Governments of the Kingdom of Denmark and the Kingdom of Sweden have requested authorisation to apply a measure derogating from Article 17 of Directive 77/388/EEC;

(3) the other Member States were informed of the requests from the Kingdom of Denmark and the Kingdom of Sweden on 3 September 1999;

(4) these requests relate to the VAT arrangements applying to the operation of the Öresund fixed link between Denmark and Sweden, and in particular to the recovery of VAT paid on tolls for the use of the link. Under the rules of territoriality, part of the VAT on tolls is payable to the Kingdom of Denmark and part to the Kingdom of Sweden;

(5) in derogation from the provisions of Article 17, as amended by Article 28f, requiring taxable persons to exercise their right to deduct or obtain a refund of VAT in the Member State where it was paid, the Swedish and Danish authorities intend to introduce a special measure enabling taxpayers to recover VAT from a single administration;

(6) the intended measure fulfils the conditions laid down in Article 27 of Directive 77/388/EEC by virtue of its limited scope and the fact that it is intended to simplify matters;

(7) on 17 June 1998 the Commission presented a proposal for a Council Directive ([2]) amending Directive 77/388/EEC as regards the rules governing the right to deduct value added tax, adoption of which would render the special measures unnecessary in the majority of cases, which involve taxable persons established in the Community;

(8) authorisation should therefore be granted until the new Directive enters into force. However, the authorisation shall expire on 31 December 2002 at the latest if the Directive has not entered into force on that date, thereby enabling the need for the derogation to be reviewed at that time in the light of the Council's discussions on the said proposal for a Directive;

([1]) OJ L 145, 13.6.1997, p. 1. Directive as last amended by Directive 99/59/EC (OJ L 162, 26.6.1999, p. 63).

([2]) OJ C 219, 15.7.1998, p. 16.

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(9) the derogation does not adversely affect the own resources derived by the European Communities from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 17(2), (3) and (4) of the Directive 77/388/EEC, as amended by Article 28f thereof, the Kingdom of Sweden and the Kingdom of Denmark are hereby authorised to apply the following procedure for the recovery of VAT on tolls paid for the use of the Öresund fixed link between the two countries:

— taxable persons established in Denmark may exercise their right to deduct that VAT paid when using the part of the link located on Swedish territory by entering it in the periodic returns to be lodged in Denmark;

— taxable persons established in Sweden may exercise their right to deduct the VAT paid when using the part of the link located on Danish territory by entring it in the periodic returns to be loged in Sweden;

— taxable persons who are not established in either of the above Member States must apply to the Swedish authorities to obtain refunds of the VAT on tolls, including that paid for using the section of the link located on Danish territory under the procedure laid down in Directive 79/1072/EEC or Directive 86/650/EEC.

Article 2

This authorisation shall expire on the date of entry into force of Community rules determining the expenditure not eligible for the deduction of value added tax, in accordance with the first subparagraph of Article 17(6) of Directive 77/388/EEC, and by ►**M1** 31 December 2006 ◄ at the latest.

Article 3

This Decision is addressed to the Kingdom of Sweden and the Kingdom of Denmark.