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COUNCIL DECISION

of 26 February 2004

authorising Spain to apply a measure derogating from Article 21 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2004/228/EC)

(OJ L 70, 9.3.2004, p. 37)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Decision 2006/126/EC, of 14 February 2006	L 51	17	22.2.2006

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COUNCIL DECISION

of 26 February 2004

authorising Spain to apply a measure derogating from Article 21 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2004/228/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 of assessment ([1]), and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) 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 or extend 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 or avoidance.

(2) By letter registered with the Secretariat-General of the Commission on 27 October 2003, the Spanish Government requested authorisation to apply special tax measures to the waste sector.

(3) The other Member States were informed of Spain's request on 7 November 2003.

(4) The derogation in question is intended to allow Spain to designate the recipient of specific types of supplies in the waste sector, as the person liable to pay the tax. In accordance with Article 17(2)(a) of Directive 77/388/EEC, the recipient of the supplies in the waste sector will be able to deduct the tax due for such supplies. This will minimise the problems faced by tax authorities in collecting the VAT due in that sector.

(5) The requested measure is to be considered first and foremost as a measure to prevent certain types of tax evasion in the waste recycling sector, such as the non-payment of invoiced VAT by traders engaged in the collection, sorting and basic transformation of waste material, who subsequently become untraceable. The measure also has the effect of simplifying the work of the tax authorities.

(6) The measure is proportionate to the objectives pursued, since it is not intended to apply to all taxable operations in the sector concerned but only to specific operations which pose considerable problems of tax evasion.

(7) On 7 June 2000 the Commission published a strategy to improve the operation of the VAT system in the short term, in which it undertook to rationalise the large number of derogations currently in force. In some cases, however, this rationalisation could involve extending certain particularly effective derogations to all Member States.

(8) The Commission's recent contacts with certain national administrations and representatives of the sector suggest that special rules specifically adapted to the sector might be necessary to ensure fairer taxation of the traders concerned across the Community. The Commission intends to prepare a proposal for a special scheme applying to the waste recycling sector.

([1]) OJ L 145, 13.6.1977, p. 1; Directive as last amended by Directive 2003/92/EC (OJ L 260, 11.10.2003, p. 8).

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(9) Consequently, this derogation should expire on the date of entry into force of a special scheme for the application of VAT to the recycled waste sector, but not later than 31 December 2005.

(10) The derogation has no adverse impact on the Communities' own resources accruing from VAT, nor does it have any effect on the amount of VAT charged at the final stage of consumption,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 21(1)(a) of Directive 77/388/EEC, as worded in Article 28(g) thereof, the Kingdom of Spain is hereby authorised to designate the recipient of the supplies of goods and services referred to in Article 2 of this Decision as the person liable to pay VAT.

Article 2

The recipient of the supply of goods or services may be designated as the person liable to pay VAT in the following instances:

(a) supplies of industrial waste, ferrous waste and scrap, residues and other recyclable materials consisting of ferrous and non-ferrous metals, their alloys, slag, ash and industrial residues containing metals or their alloys, and the supply of selection, cutting, fragmenting and pressing services for these products;

(b) supplies of waste material consisting of paper, paperboard or glass;

(c) supplies of semi-finished products (e.g. ingots, blocks, sheets, bars, grains, granules, wire rod, etc.) resulting from the processing, manufacturing or melting down of non-ferrous metals, except those containing nickel.

Article 3

This Decision shall expire on the date of entry into force of a special scheme for the application of VAT to the recycled waste sector amending Directive 77/388/EEC, but not later than ►**M1** 31 December 2009 ◄.

Article 4

This Decision is addressed to the Kingdom of Spain.