

COUNCIL DECISION

of 23 November 1992

authorizing the United Kingdom to apply a measure derogating from Article 28e (1) of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(92/546/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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, pursuant to Article 27 (1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorize 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 Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value-added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers⁽²⁾ introduces the concept of intra-Community acquisitions of goods; whereas the arrangements for taxing such acquisitions pose certain problems in the United Kingdom concerning the taxable amount;

Whereas the United Kingdom was authorized by a Council Decision⁽³⁾, deemed to have been adopted on 11 April 1987 in accordance with the procedure laid down by Article 27 (4) of Directive 77/388/EEC, to introduce in certain circumstances special measures to determine the taxable amount of supplies and importations of goods, and of supplies of services; whereas the authorization of 11 April 1987 does not extend to cover intra-Community acquisitions;

Whereas the United Kingdom, by letter officially received by the Commission on 27 April 1992, requested the

authorized derogation to be extended so as to cover intra-Community acquisitions of goods;

Whereas the other Member States were informed on 21 May 1992 of the United Kingdom's request;

Whereas the purpose of this derogation is to prevent persons having certain family, legal or business ties, specified in national legislation, from artificially reducing the price of intra-Community acquisitions so as to benefit from a more advantageous tax position than would otherwise be possible;

Whereas the measure envisaged by the United Kingdom consists of enabling the relevant authorities to direct that the open market value of the relevant transaction shall be used, where the value of the transaction would otherwise be less than the open market value;

Whereas the proposed measure is limited in scope in so far as it would only be applicable to intra-Community acquisitions made by persons who are not fully taxable persons;

Whereas the proposed measure constitutes a derogation from Article 28e (1) of Directive 77/388/EEC;

Whereas the authorization requested will be temporary;

Whereas the derogation will have a favourable effect on the Community's own resources arising from value-added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 28e (1) of Directive 77/388/EEC, the United Kingdom is hereby authorized until 31 December 1996 to introduce a special measure allowing the appropriate authorities to direct that the open market value be taken as the taxable amount for intra-Community acquisitions of goods, where the person by whom the goods are acquired is not a fully taxable person, and where there exist certain family, legal or business ties, specified in the national legislation, between the person by whom the goods are acquired and the supplier.

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1, as last amended by Directive 91/680/EEC (OJ No L 376, 31. 12. 1991, p. 1).

⁽²⁾ OJ No L 376, 31. 12. 1991, p. 1.

⁽³⁾ OJ No L 132, 21. 5. 1987, p. 22.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 23 November 1992.

For the Council

The President

N. LAMONT
