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COUNCIL DECISION

of 16 April 2007

authorising the United Kingdom to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

(2007/250/EC)

(OJ L 109, 26.4.2007, p. 42)

Amended by:

		Official Journal		
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COUNCIL DECISION

of 16 April 2007

authorising the United Kingdom to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

(2007/250/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (¹), and in particular Article 395(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1)   In a letter registered by the Secretariat-General of the Commission on 10 February 2006, the United Kingdom requested authorisation to introduce a special measure derogating from Article 21(1)(a) of 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 values added tax: uniform basis of assessment (²).

(2)   In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States by letter dated 18 July 2006 of the request made by the United Kingdom. By letter dated 19 July 2006, the Commission notified the United Kingdom that it had all the information it considered necessary for appraisal of the request.

(3)   Directive 77/388/EEC has been recast and repealed by Directive 2006/112/EC. References to the provisions of the former are to be construed as references to the latter.

(4)   The person liable for payment of the value added tax (VAT), under Article 193 of Directive 2006/112/EC, is the taxable person supplying the goods. The purpose of the derogation requested by the United Kingdom is to place that liability on the taxable person to whom the supplies are made, but only under certain conditions and exclusively in the case of mobile telephones and computer chips/microprocessors.

(5)   Within that sector, a significant number of traders engage in tax evasion by not paying VAT to the tax authorities after selling the products. Their customers, however, being in receipt of a valid invoice, remain entitled to a tax deduction. In the most aggressive forms of this tax evasion, the same goods are, via a 'carousel' scheme, supplied several times without payment of the VAT to the tax authorities. By designating in those cases the person to whom the goods are supplied as the person liable for the VAT, the derogation would remove the opportunity to engage in that form of tax evasion. However, it would not affect the amount of VAT due.

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(¹) OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2006/138/EC (OJ L 384, 29.12.2006, p. 92).
(²) OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/98/EC (OJ L 363, 20.12.2006, p. 129).

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(6)   For the purposes of ensuring the effective operation of the derogation and preventing the tax evasion from being shifted to other products or towards the retail level, the United Kingdom should introduce appropriate control and reporting obligations. The Commission should be informed of the specific measures adopted, and the monitoring and overall evaluation of the operation of the derogation.

(7)   The measure is proportionate to the objectives pursued since it is not intended to apply generally, but only to a specific high risk sector comprising certain carefully defined products in relation to which the scale and size of the tax evasion has resulted in considerable tax losses. Furthermore, since that sector is a small one, the derogation cannot be considered equivalent to a general measure.

(8)   The authorisation should be valid only for a short period, because it cannot be ascertained with certainty that the objectives of the measure will be achieved, nor can the impact of the measure on the functioning of the VAT system in the United Kingdom and in other Member States be gauged in advance; moreover, the impact of the measure and its implementation on the functioning of the internal market will have to be properly assessed.

(9)   The derogation has no negative impact on the Community's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 193 of Directive 2006/112/EC, the United Kingdom is authorised to designate the taxable person to whom supplies of the following goods are made as the person liable to pay VAT:

1. mobile telephones, being devices made or adapted for use in connection with a licensed network and operated on specified frequencies, whether or not they have any other use;

2. integrated circuit devices such as microprocessors and central processing units in a state prior to integration into end user products.

The derogation shall apply in respect of supplies of goods for which the taxable amount is equal to or higher than GBP 5 000.

Article 2

The derogation provided for in Article 1 is subject to the United Kingdom introducing appropriate and effective control and reporting obligations on taxable persons that supply goods to which the reverse charge applies in accordance with this Decision.

Article 3

The United Kingdom shall inform the Commission where it has adopted the measures referred to in Articles 1 and 2 and shall, by 31 March 2009, submit a report to the Commission on the overall evaluation of the operation of the measures concerned, in particular as regards the effectiveness of the measure and any evidence of the shifting of tax evasion to other products or to the retail level.

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Article 4

This Decision shall expire on 30 April 2011.

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Article 5

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.