

COUNCIL DECISION

of 21 October 2004

authorising Portugal to apply a measure derogating from Articles 21(1)(a) and 22 of Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2004/738/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 for assessment⁽¹⁾, and in particular Article 27(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) By letter registered with the Commission on 19 February 2004 Portugal requested authorisation to introduce a derogating measure in respect of the doorstep sales sector.
- (2) The other Member States were informed thereof on 26 March 2004.
- (3) Portugal was notified on 30 March 2004 that the Commission was in possession of all the information it needed to take a decision on the matter.
- (4) The measure is intended to enable certain firms engaged in doorstep selling to pay on behalf of their resellers the VAT due on the prices of the products the resellers sell to their customers, provided that the entire turnover of the firms is obtained from doorstep sales by resellers working in their own name and on their own account and that price lists setting out the selling price charged to the public for all the firms' products are drawn up in advance and adhered to.
- (5) The derogation will apply solely to cases where the firm sells its products direct to resellers who, in turn, sell direct to final consumers.
- (6) Firms which fulfil the above conditions and have been duly authorised by the tax administration will pay to the treasury the amount of VAT due on the pre-established retail selling price.

(7) The resellers concerned will no longer be required to pay tax on their sales and will therefore not benefit from the right to deduct.

(8) This arrangement constitutes a derogation from Article 21(1)(a) of the Sixth Directive in that the wholesaler will be deemed liable for the tax on goods sold to end consumers by his resellers.

(9) Wholesalers are therefore required to fulfil the obligations regarding tax returns, tax invoicing and payment of tax, etc., in respect of the goods their resellers sell to final consumers and, by derogation from Article 22, their resellers are exempt from these obligations in respect of the goods they supply to final consumers.

(10) The arrangement was authorised by the earlier Council Decision 1999/82/EC of 18 January 1999⁽²⁾, which was applicable from 1 January 1999 to 31 December 2000.

(11) The Commission considers that this derogation is a simplification measure and therefore fulfils the conditions set out in Article 27 of the Sixth Directive.

(12) The derogation should be authorised until 31 December 2009.

(13) The derogation will not alter the amount of VAT collected at the stage of final consumption and will not have a negative effect on the European Communities' own resources obtained from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

Portugal is hereby authorised to apply until 31 December 2009 a special measure for the taxation of doorstep sales that contains provisions derogating from Sixth Directive 77/388/EEC.

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

⁽²⁾ OJ L 27, 2.2.1999, p. 28.

A business whose total turnover is derived from doorstep sales made by resellers acting in their own name and on their own account may request the administration for authorisation to apply the provisions of Articles 2 and 3 below on condition that:

- (a) all products sold by the firm are contained in a pre-established price list applicable at the final consumption stage;
- (b) the firm sells its products direct to resellers who, in turn, sell direct to final consumers.

Article 2

By way of derogation from Article 21(1)(a) of the Sixth Directive 77/388/EEC, any firm which has been authorised to

apply this special measure shall be liable for the tax payable on goods supplied by its resellers to final consumers.

Article 3

Any reseller supplied by a business authorised to apply this special measure shall be exempt from the obligations laid down in Article 22 of Sixth Directive 77/388/EEC regarding goods it supplies to final consumers.

Article 4

This Decision is addressed to Portugal.

Done at Luxembourg, 21 October 2004.

For the Council

The President

G. ZALM