

## COUNCIL DECISION

of 18 July 1989

authorizing the United Kingdom to apply a measure derogating from Article 11 (A) (1) (b) of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/466/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 <sup>(1)</sup>, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive, 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 or avoidance;

Whereas the United Kingdom, by letter addressed to the Commission and registered on 9 January 1989, requested authorization to introduce a special measure derogating from Article 11 of the said Directive;

Whereas the other Member States were informed of the United Kingdom's request on 9 February 1989;

Whereas, by letter dated 10 April 1989, the Commission, having decided that it had fundamental objections to the United Kingdom Government's request, asked, in accordance with Article 27 (4) of the Sixth Directive, that the matter be raised by the Council;

Whereas, by a note dated 10 May 1989, the United Kingdom informed the Council that it was modifying and narrowing the scope of the derogation notified to the Commission on 9 January 1989;

Whereas the United Kingdom currently exempts all building land under Article 28 (3) (b), read in conjunction with point 16 of Annex F to the Sixth Directive;

Whereas, in order to comply with the spirit of the Court of Justice ruling in Case 416/85, the United Kingdom wishes to tax supplies of buildings and the land on which they stand where these are used for commercial or industrial purposes, while retaining zero rating for supplies of residential buildings and exemption for supplies of building land;

Whereas, in order to simplify the procedure for charging the tax and to prevent certain types of tax evasion or avoidance, the United Kingdom wishes to apply the tax to transactions relating to commercial or industrial buildings and to the land on which they stand before first occupation on the basis of the open market value at the time they are taken into use; whereas, in the case of supply or letting with the developer option for taxation under Article 13 (C) (a) of the Sixth Directive, this objective is achieved because the price of the supply or the rent necessarily reflects the value of the land at the time of such supply or letting;

Whereas, in order to achieve the objective in question where the building is to be occupied by a taxable person who has constructed it and who is not entitled to full deduction of the tax or where the same taxable person lets the building on an exempt basis under Article 13 (B) (b) of the Sixth Directive, the United Kingdom intends to make use of the option provided for in Article 5 (7) (a) and (b) of the said Directive to tax such occupation or letting of the property on the basis of its open market value;

Whereas, as a result of the taxable amount being determined by reference to the open market value in this way, the amended request derogates from Article 11 (A) (1) (b) of the Sixth Directive, which stipulates that, in respect of supplies referred to in Article 5 (6) and (7), the taxable amount is the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time of supply;

Whereas it is appropriate to accede to the request of the United Kingdom pending deletion of point 16 of Annex F to the Sixth Directive, which permits Member States to exempt temporarily supplies of new buildings and building land;

<sup>(1)</sup> OJ No L 145, 13. 6. 1977, p. 1.

Whereas the said special measure will not have a negative effect on the European Communities' own resources accruing from value added tax,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

By way of derogation from Article 11 (A) (1) (b) of the Sixth Directive, the United Kingdom is hereby authorized to use the open market value as the taxable amount for the supply, within the meaning of Article 5 (7) (a) and (b) of the said Directive, of buildings or parts of buildings before first occupation and of the land on which they stand.

*Article 2*

This authorization shall be granted pending the deletion of point 16 of Annex F to the Sixth Directive.

*Article 3*

This Directive is addressed to the United Kingdom.

Done at Brussels, 18 July 1989.

*For the Council*  
*The President*  
R. DUMAS