COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 312 final

Brussels, 20 June 1989

Proposal for a

COUNCIL DECISION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

By letter received by the Commission on 9 January 1989, the United Kingdom Government submitted a request for a derogation based on Article 27 of the Sixth VAT Directive[1] in respect of a special measure described as being aimed at simplifying the procedure for charging VAT on supplies of building land intended for commercial or industrial use.

In accordance with Article 27(3) of the Sixth Directive, the other Member States were informed, by letter dated 9 February 1989, of the United Kingdom's request.

Having concluded that it had fundamental objections to the United Kingdom's request, the Commission requested, by way of a communication dated 10 April 1989 and in accordance with Article 27(4) of the Sixth Directive, that the matter be raised by the Council.

Following this referral request, the United Kingdom Government informed the Council that it intended to modify the scope of the measure so as to limit it to a derogation from Article 11(A)(1)(b) of the Sixth Directive.

In the light of the Court of Justice's ruling in case 416/85, the United Kingdom has decided to tax supplies of buildings used for commercial or industrial purposes at the standard rate.

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[1] OJ No 145, 13.6.1977.

In addition, the United Kingdom has decided to make use of the option provided for in the Sixth Directive of defining buildings as including the land on which they stand, while at the same time maintaining a general exemption for supplies of building land based on the transitional provision in Article 28(3)(b) read in conjunction with point 16 of Annex F to the said Directive.

To that end and in order not to overcomplicate control of the use (commercial, industrial or housing use) of the land (simplification measure) and in particular to prevent tax avoidance through separate acquisition of land followed by development of it, the United Kingdom plans to tax commercial or industrial buildings and the land on which they stand when they go into consumption. For that purpose, it is using the option provided for in Article 5(7)(a) and (b) of the Sixth Directive by taxing the self-supply of the building and the land on which it stands on the basis of the open market value at that time. However, use of this option is necessary only where the building is occupied by a taxable person who has constructed it and who is not entitled to full deduction of the tax or where that taxable person lets it on an exempt basis. The United Kingdom argues that, where the building is sold or its letting is taxed, the price received for the sale or letting necessarily includes the value of the building and the land on which it stands at the time either of those transactions takes place.

The use of the open market value as the taxable amount for the self-supply therefore constitutes the special measure in respect of which the United Kingdom is currently requesting a derogation.

Article 11(A)(1)(b) of the Sixth Directive stipulates that, where use is made of the option provided for in Article 5(7)(a) and (b), the purchase price of the goods or the cost price determined at the time of supply should serve as the basis for determining the taxable amount.

The Commission notes that the derogation now submitted by the United Kingdom is fairly limited in scope in relation to the provisions of the Sixth Directive. It is also convinced that the measure in question is designed to simplify the procedure for charging tax and to prevent tax avoidance or evasion within the meaning of Article 27 of the Sixth Directive.

The Commission therefore considers it appropriate for the United Kingdom to be authorized to introduce the planned special measure. It nevertheless takes the view that the situation should be re-examined when the transitional provision in point 16 of Annex F, read in conjunction with that in Article 28(3)(b) of the Sixth Directive, is abolished and accordingly proposes that the authorization be limited as to duration.

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relating to turnover taxes

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) 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], hereinafter referred to as the "Sixth Directive", and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

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[1] O.J. N. L 145, 13.6.1977, p. 1

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 received by the Commission 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, for 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 this request pending abolition of point 16 of the above-mentioned Annex F, which permits Member States to exempt temporarily supplies of new buildings and building land;

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

HAS ADOPTED THIS DECISION :

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 abolition of the transitional provision in point 16 of Annex F together with that of Article 28(3)(b) of the Sixth Directive.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels,

For the Council,
The President

Commission of the European Communities

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