

COUNCIL DECISION

of 19 November 2004

authorising Germany to apply a measure derogating from Article 17 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2004/817/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 of assessment⁽¹⁾, and in particular Article 27(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) In a letter registered by the Commission's Secretariat-General on 22 March 2004 the German authorities requested authorisation to continue to apply a derogation which had been granted by Article 1 of Council Decision 2000/186/EC⁽²⁾.
- (2) The other Member States were informed of the request on 6 August 2004.
- (3) The derogating measure is intended to exclude expenditure on goods and services completely, from the right to deduct VAT when the goods and services are used more than 90 % for the private purposes of the taxable person, or of his employees, or for non-business purposes in general. This measure is a derogation from Article 17 of Directive 77/388/EEC, as amended by Article 28f of that Directive, and is justified by the need to simplify the procedure for charging VAT; it affects the amount of tax due at the final consumption stage only to a negligible extent.
- (4) The authorisation expired on 30 June 2004⁽³⁾, although the legal situation and the facts which justified application of the simplification measure in question have not changed and continue to exist.

(5) In its recent judgment of 29 April 2004 in case C-17/01, the Court decided that consideration of the procedure prior to the adoption of Decision 2000/186/EC of 28 February 2000 had disclosed no irregularity such as to affect the validity of that decision. Germany should therefore be authorised to apply the simplification measure during a further period of time until 31 December 2009.

(6) The derogation will not adversely affect the Communities' own resources from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 17(2) of Directive 77/388/EEC Germany is authorised to exclude expenditure on goods and services from the right to deduct VAT when the goods and services in question are used more than 90 % for the private purposes of a taxable person or of his employees, or, more generally, for non-business purposes.

Article 2

This Decision shall apply until 31 December 2009.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 19 November 2004.

For the Council

The President

J. P. H. DONNER

⁽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 59, 4.3.2000, p. 12.

⁽³⁾ Decision 2003/354/EC (OJ L 123, 17.5.2003, p. 47).