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COUNCIL DECISION

of 6 November 2001

authorising the Kingdom of Spain to apply a measure derogating from Article 11 of the sixth Directive 77/388/EEC on the harmonisation of the laws of Member States relating to turnover taxes

(2001/865/EC)

(OJ L 323, 7.12.2001, p. 24)

Amended by:

	Official Journal		
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► <u>M1</u> Council Decision 2004/854/EC of 7 December 2004	L 369	60	16.12.2004



COUNCIL DECISION

of 6 November 2001

authorising the Kingdom of Spain to apply a measure derogating from Article 11 of the sixth Directive 77/388/EEC on the harmonisation of the laws of Member States relating to turnover taxes

(2001/865/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 Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment ⁽¹⁾, hereinafter the 'sixth VAT Directive' and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) In a letter registered by the Commission's Secretariat General on 7 March 2001, the Spanish Government requested authorisation on the basis of Article 27 of the sixth VAT Directive, to apply a measure derogating from Article 11(A)(1)(a) of that Directive.
- (2) Under Article 27(1) of the sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of the Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.
- (3) In accordance with the said Article 27, the other Member States were informed of the request from the Kingdom of Spain by letter of 15 March 2001.
- (4) Article 11(A)(1)(a) of the sixth VAT Directive states that, in principle, the taxable amount in respect of supplies of goods and services shall be everything which constitutes the consideration which has been or is to be obtained by the supplier for such supplies from the purchaser, the customer or a third party.
- (5) The Kingdom of Spain, by way of derogation from these provisions, has requested authorisation to include in the taxable amount for a service of working investment gold the value of the raw material provided by the purchaser of the service and used to make the finished product.
- (6) The aim of the derogation is to avoid abuse of the exemption for investment gold and thus to prevent certain types of tax evasion or avoidance. It therefore meets the conditions set out in Article 27 of the sixth VAT Directive.
- (7) The forms of tax evasion or avoidance in question consist mainly of the purchase of VAT-exempt investment gold which is then worked to make jewellery or other goods, with no VAT being paid on the value of the investment gold involved in the transaction.
- (8) The derogation will expire on 31 December 2004, so that an assessment can then be made as to whether it is appropriate in the light of changes in the application of the special system for investment gold established by Directive 98/80/EC ⁽²⁾.
- (9) The derogation will have no negative impact on the European Communities' own resources provided from value added tax,

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2001/41/EC (OJ L 22, 24.1.2001, p. 17).

⁽²⁾ OJ L 281, 17.10.1998, p. 31.

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HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Spain is authorised, by way of derogation from Article 11(A)(1)(a) of the sixth VAT Directive, to include in the taxable amount in respect of the supply of goods or services involving the working of non-taxed investment gold the value of the gold contained in the finished product based on the current market value of the investment gold.

▼M1*Article 2*

The authorisation granted under Article 1 shall expire on the date of entry into force of a directive rationalising the derogations pursuant to Article 27 of Directive 77/388/EEC which counter avoidance of value added tax linked to the exemption for investment gold or on the 31 December 2009, whichever is the earlier.

▼B*Article 3*

This Decision is addressed to the Kingdom of Spain.