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ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



ÞPOS BENDRIJŲ TEISINGUMO TEISMAS
İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
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SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTIEV
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EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Case C-33/03

Commission of the European Communities v United Kingdom

THE UNITED KINGDOM ORDER PERMITTING EMPLOYERS TO DEDUCT VAT ON SUMS REIMBURSED TO EMPLOYEES FOR THE VEHICLE FUEL THEY BUY IS INCOMPATIBLE WITH COMMUNITY LAW

The order does not ensure that the VAT deducted relates exclusively to fuel used for the purposes of the employer's taxable transactions

According to the Sixth VAT Directive,¹ a taxable person may deduct VAT in respect of goods and services used for the purposes of his taxable transactions. In order to exercise this right, a taxable person must hold an invoice.

A United Kingdom order of 1991² provides that road fuel bought by employees is treated as supplied to the employer when the employer reimburses the employee. Reimbursement may be made either by means of a mileage allowance or on the basis of the actual amount paid. Where the fuel is treated as having been supplied to the employer for his requirements, he may deduct the VAT paid.

Considering that the grant of the right to deduct was not compatible with the obligation to hold an invoice, the Commission brought infringement proceedings against the United Kingdom. When examining the matter, the Commission furthermore concluded that the right to deduct was also contrary to the principle that only VAT on goods and services supplied to a taxable person for the purposes of his own transactions may be deducted.

The Court observes that the provisions of the Sixth VAT Directive clearly specify the conditions giving rise to the right to deduct and the extent of that right. They do not leave the Member States any discretion as regards their implementation. The Sixth VAT Directive makes it clear that a taxable person is authorised to deduct VAT in respect of goods and services supplied by another taxable person for the purposes of his taxable transactions. The

¹ 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 (OJ 1977 L 145, p. 1).

² VAT (InputTax) (Person Supplied) Order 1991.

order at issue enables a taxable person, the employer, to deduct VAT on the fuel supplied to non-taxable persons, employees. It is true that in carrying out their work employees act on behalf of their employer. Nevertheless, the Court finds that the U.K. Order does not make the right to deduct subject to the condition that the fuel bought by the employee should be used for the purposes of the employer's taxable transactions.

On the contrary, that order permits the deduction of VAT on the amount of fuel reimbursed computed by reference to the total distance travelled, 'whether or not including distances travelled otherwise than for the purposes of the business of the taxable person'. It is therefore possible for the employer to deduct VAT in respect of fuel used by the employee for his private purposes.

It follows that **the U.K. Order is not compatible with the Sixth VAT Directive since it does not guarantee that the VAT deducted relates solely to fuel used for the purposes of the taxable person's taxed transactions.**

The United Kingdom Government has challenged the claim concerning the obligation to hold an invoice only if the first claim should be held to be unfounded. In those circumstances, the Court finds that the U.K. order is also infringes that obligation.

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Languages available: EN, FR, DE

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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