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DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
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 BENDRIJŪ TEISINGUMO TEISMAS  
İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV  
SODIŠČE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

**PRESS RELEASE No 22/05**

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Advocate General's Opinion in Case C-204/03

*Commission of the European Communities v Kingdom of Spain*

**ACCORDING TO ADVOCATE GENERAL POIARES MADURO, THE PROVISIONS  
OF SPANISH LAW LIMITING THE RIGHT TO DEDUCT VAT OF TAXABLE  
PERSONS IN RECEIPT OF SUBSIDIES FOR THE PURPOSE OF FUNDING THEIR  
ACTIVITIES ARE CONTRARY TO COMMUNITY LAW**

*Mr Poiares Maduro considers that the Sixth Directive clearly specifies the conditions giving rise to the right to deduct, the extent of that right and the conditions in which it may be limited.*

In 2003 the European Commission brought an action against Spain before the Court of Justice of the European Communities, considering the Spanish legislation on value added tax (VAT)<sup>1</sup> to be contrary to the Sixth VAT Directive.<sup>2</sup>

The Sixth VAT Directive provides that the deductible proportion mechanism<sup>3</sup> may apply only where taxable persons carry out both transactions which are taxable but exempt and

<sup>1</sup> Law No 37/1992 of 28 December 1992 on value added tax, amended by Law No 66/1997 of 30 December 1997.

<sup>2</sup> 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).

<sup>3</sup> The proportion is, roughly speaking, a percentage applicable to taxable persons only some of whose transactions are subject to VAT. In that situation, they may deduct only a fraction of the VAT which they themselves have paid upstream. The deduction is allowed only in relation to that part of the VAT that is proportional to the amount relating to transactions in respect of which the tax is deductible. The proportion deductible is made up of a fraction having:

- as numerator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions in respect of which the tax is deductible and
- as denominator, the total amount, exclusive of value added tax, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which value added tax is not deductible. The Member States may also include in the denominator the amount of subsidies not linked to the cost of goods and services.

taxed transactions. It also lays down the detailed rules for calculation of the deductible proportion.

The Spanish legislation provides, inter alia, for the application of the deductible proportion rule to taxable persons who receive subsidies intended to fund their trade or business activities. Furthermore, it provides that subsidies granted to fund the purchase of certain goods or services do not give rise to the application of the proportion and are not included in its denominator, but rather limit the right to deduct the VAT paid in respect of the portion of the price of the goods or services funded by the subsidy.

Advocate General Poiares Maduro has delivered his Opinion today.

*- Concerning the limitation of the right to deduct in respect of all taxable persons in receipt of subsidies intended to fund their trade or business activities by application of a proportion the denominator of which includes those subsidies*

According to the Advocate General, the wording of the Sixth VAT Directive makes it very clear that the deductible proportion may be applied to one given class of taxable persons only. Those persons are “mixed” taxable persons, who carry out both transactions in respect of which VAT is deductible and transactions in respect of which VAT is not deductible. **The proportion may not, therefore, be applied to “fully” taxable persons who carry out only transactions in respect of which VAT is deductible.**

*- Concerning the rule that subsidies granted to fund the purchase of certain goods or services do not give rise to the application of the proportion and are not included in the denominator of the proportion, but instead limit the right to deduct the VAT paid in respect of the portion of the price of the goods or services funded by the subsidy.*

The Advocate General considers that the limitation of the right to deduct by reason of the grant of non-price-linked subsidies affects mixed taxable persons alone and, so far as it concerns them, may not be imposed except in accordance with the rules on the proportion laid down in the directive. In this connection, **the Spanish legislation extends the limitation in two ways: first, the limitation is extended to taxable persons who are not, as a rule, subject to it and, second, with regard to those who are subject to it, it imposes a limitation which goes beyond the rules laid down by the Sixth VAT Directive.**

Lastly, Mr Poiares Maduro notes that, in accordance with settled case-law, the Court has declared that the provisions of the Sixth VAT Directive relating to the right to deduct do not leave the Member States any discretion as regards their implementation. In consequence, derogations are permitted only in the cases expressly provided for by the directive in order that limitations of the right to deduct should be applied in a similar manner in all the Member States.

**IMPORTANT: The Advocate General’s Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: EN, ES, FR*

*The full text of the Opinion 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 of delivery.*

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