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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
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Press and Information

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Judgment of the Court of Justice in Case C-204/03

Commission of the European Communities v Kingdom of Spain

THE PROVISIONS OF SPANISH LAW LIMITING THE RIGHT TO DEDUCT VAT OF TAXABLE PRSONS RECEIVING SUBSIDIES FOR THE PURPOSE OF FINANCING THEIR ACTIVITIES ARE CONTRARY TO COMMUNITY LAW

The Sixth Directive states precisely what limitations of the right to deduct are permissible

In 2003, the European Commission brought an action before the Court of Justice of the European Communities against Spain, maintaining that part of the Spanish law on value added tax (VAT) ¹ was contrary to the Sixth Directive ².

The Sixth Directive provides for a right to deduct VAT in respect of input tax on the goods and services used by taxable persons for the purposes of their taxed transactions. Where the taxable person carries out, at the same time, transactions in respect of which VAT is deductible and exempted transactions in respect of which it is not (**mixed taxable persons**), only such proportion of the VAT is deductible as is attributable to the taxed transactions. The directive also sets out the method for calculating that deductible proportion according to which the granting of certain subsidies may, in the case of **mixed taxable persons**, reduce the right to deduct.

Spanish law provides for the application of the rule of the deductible proportion in respect of **all taxable persons** who receive subsidies aimed at financing their commercial and professional activities which do not form part of the taxable amount. They are part of the denominator of the portion which that proportion results from and thus generally diminish the right to deduct enjoyed by taxable persons.

In addition, it provides that subsidies granted to finance the purchase of certain goods or services do not give rise to the application of the proportion and are not included in the

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

² 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).

denominator thereof, but limit the right to deduct the VAT paid to the amount corresponding to the part of the price of the good or service financed by the subsidy.

The Court points out, first, that any limitation of the right to deduct VAT affects the level of the tax burden and must be applied in a similar manner in all the Member States. Consequently, derogations are permitted only in the cases expressly provided for in the Sixth Directive.

Second, it observes that, according to the Sixth Directive, **the application of the deductible proportion in respect of taxable persons who receive subsidies which do not form part of the price of the good or service provided and which do not form part of the taxable amount for VAT purposes is only provided for in the case of mixed taxable persons**, that is, taxable persons who carry out, at the same time, transactions in respect of which VAT is deductible and transactions in respect of which VAT is not deductible. The Kingdom of Spain has failed to fulfil its obligations by providing that the proportion is applicable to **fully taxable persons** who carry out only transactions in respect of which VAT is deductible.

Finally, the Court finds that **the special rule which limits the right to deduct VAT on the purchase of goods and services which are subsidised introduces a mechanism for limiting the right to deduct which is not authorised by the Sixth Directive.**

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

Languages available: CS, DE, EN, ES, HU, PL, SK

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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