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CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
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Press and Information

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Judgment of the Court of Justice in Case C-475/03

*Banca Popolare di Cremona Soc. coop. arl v. Agenzia Entrate Ufficio di Cremona*

**IRAP IS COMPATIBLE WITH COMMUNITY LAW**

*It has characteristics which distinguish it from VAT and cannot be characterised as a turnover tax*

The Banca popolare di Cremona brought an action before the Commissione tributaria provinciale di Cremona against the decision of Agenzia Entrate Ufficio Cremona refusing to reimburse the IRAP (regional tax on productive activities) paid in 1998 and 1999.

The Commissione tributaria then asked the Court of Justice for a ruling on the compatibility of IRAP with the Sixth VAT Directive,<sup>1</sup> and in particular with the prohibition on the introduction or maintenance by Member States of taxes which are in the nature of turnover taxes.

In today's judgment, the Court of Justice outlines, first, the objectives of the introduction of a common system of VAT: the establishment of a common market whose characteristics are similar to those of a domestic market, without tax differences liable to distort competition and hinder trade. The aim was to replace the turnover taxes in force in the various Member States. Consequently, the common system of VAT does not allow the maintenance or introduction of taxes with the characteristics of a turnover tax. On the other hand, it does not preclude the maintenance or introduction of a tax which does not have one of the essential characteristics of VAT.

The Court then analyses and compares certain fundamental characteristics of the two taxes:

Under the common system, VAT applies generally to transactions relating to goods or services; it is proportional to the price of goods and services; it is charged at each stage of the

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<sup>1</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).

production and distribution process; a taxable person can deduct the amounts paid during the preceding stages of the process (the final burden of the tax rests ultimately on the consumer).

**IRAP** is, in contrast, primarily a tax charged on the **net value of production** (the difference appearing in the profit and loss account between the 'value of production' and the 'production costs' as defined by Italian legislation) of an undertaking (a company or natural person) within the territory of a region in a given period. It includes elements such as variation in stocks, amortisation and depreciation, which have no direct connection with the supply of goods or services as such.

Moreover, a taxable person cannot ascertain exactly the amount of IRAP already included in the purchase price of goods and services. Even on the assumption that a taxable person liable to IRAP selling to final consumers will take account, in fixing his price, of the amount of the charge included in its general expenses, **not all taxable persons have the possibility of thus passing on, or passing on in full, the burden of the tax to the final consumer.**

In summary, IRAP differs from VAT in that it is not **proportional to the price** of goods and services and it is **not intended to be passed on to the final consumer in a way characteristic of VAT.**

IRAP differs from VAT in such a way that it cannot be characterised as a turnover tax within the meaning of the Sixth Directive. It follows that a tax with the characteristics of IRAP is **compatible with the Sixth Directive.**

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

*Languages available: FR, CS, DE, EN, ES, EL, HU, IT, NL, PL, PT, SK, SL*

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

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-475/03>*

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

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite", a service provided by the European Commission, Directorate-General Press and Communications,*

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