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Press and Information

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Judgment of the Court of Justice in Case C-502/07

K-1 sp. z o.o. v. Dyrektor Izby Skarbowej w Bydgoszczy

**COMMUNITY LAW DOES NOT PRECLUDE AN ADMINISTRATIVE PENALTY
WHICH MAY BE IMPOSED ON PERSONS LIABLE TO VAT**

An ‘additional tax’ such as provided for by Polish legislation, and which is imposed in the event of a tax declaration error, does not constitute VAT

A Polish Law of 2004¹ provides that, where it is established that a taxable person has indicated, in the tax declaration submitted by that person, an amount of tax difference to be repaid in respect of VAT or input tax to be repaid which is greater than the amount actually due, the head of the tax office or tax inspection authority is to determine the correct amount to be repaid and to fix an ‘additional tax liability’ equivalent to 30% of the amount of the overstatement. By decision of 2005, the Director of the Tax Office in Toruń (Poland), having established, in respect of the company K-1, that the amount of VAT declared as input tax had exceeded output tax for May 2005, fixed an additional tax liability in respect of that month. K-1 considered that measure to be incompatible with Community law and appealed against that decision.

Hearing the appeal on a point of law, the Naczelny Sąd Administracyjny (Polish Supreme Administrative Court) made a preliminary reference to the Court of Justice of the European Communities in which it asked whether the Polish additional tax was compatible with Community law, more specifically with the common system of VAT established by the Sixth VAT Directive².

The Court restates the four essential characteristics of VAT: VAT applies generally to transactions relating to goods or services; it is proportional to the price charged by the taxable person in return for the goods and services which he has supplied; it is charged at each stage of the production and distribution process, including that of retail sale, irrespective of the number of transactions which have previously taken place; the amounts paid during the preceding stages of the process are deducted from the tax payable by a taxable person, with the result that the tax

¹ Law of 11 March 2004 on the taxation of goods and services, in the version applicable to the dispute in the main proceedings.

² 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).

applies, at any given stage, only to the value added at that stage and the final burden of the tax rests ultimately on the consumer.

Next, the Court notes that an 'additional tax' such as that provided for by the Polish legislation does not have those characteristics, since it arises, not from any transaction, but from a declaration error. In addition, the amount thereof is not proportional to the price charged by the taxable person.

The Court takes the view that it is not a tax but, in fact, an administrative penalty imposed where it is established that the taxable person has indicated an amount of tax difference to be repaid in respect of VAT or input tax to be repaid which is greater than the amount due to that person. The Court rules that the principle of a common system of VAT does not preclude the introduction by the Member States of such measures. On the contrary, it points out that the Member States may, under the Sixth VAT Directive, impose obligations which they deem necessary for the correct levying and collection of VAT.

In addition, the Court states that the Polish additional tax does not constitute 'a special measure for derogation' for preventing certain types of tax evasion or avoidance, the adoption of which by a Member State would require the authorisation of the Council, acting unanimously on a proposal from the Commission.

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

Languages available: FR EN ES IT EL NL PL

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-502/07>

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

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