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Press and Information

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Judgment of the Court of Justice in Case C-284/03

Belgian State v Temco Europe SA

THE COURT CLARIFIES THE CONCEPT OF LETTING OF IMMOVABLE PROPERTY FOR THE PURPOSES OF THE SIXTH VAT DIRECTIVE

Transactions, by which a company grants a licence to occupy property in return for a payment set primarily on the basis of the area occupied, constitute the “letting of immovable property” where they have as their essential object the making available, in a passive manner, of premises in return for a payment linked to the passage of time.

The Sixth VAT Directive¹ provides that the letting of immovable property is exempt from VAT.

Temco Europe is the owner of property in Brussels in which it had refurbishment work carried out in 1993 and 1994. The VAT invoiced on that work was deducted by Temco.

In 1994, Temco concluded three contracts with three companies, Temco Energy Management Company SA, Publi-round SA and Petrus SA, which share a common central management with it. By those agreements Temco Europe allows the companies to carry on their activities in its property in exchange for a rent set by reference to square metres occupied and payable annually. The agreements are entered into for the duration of the companies' activities, but allow Temco Europe, at any time and without prior notice, to require the premises let to be vacated.

The VAT Authority held that the agreements were in reality lettings of immovable property, exempt from VAT, and claimed payment of the sums in respect of VAT wrongfully deducted in respect of the refurbishment works carried out.

Following Temco Europe's refusal to pay those sums, the Administration issued a summons against it, which the Tribunal de première instance de Bruxelles (Brussels Court of First Instance) annulled. The Belgian State appealed before the Cour d'appel de Bruxelles (Brussels Court of Appeal) which referred a question to the Court of Justice of the European

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.

Communities for a preliminary ruling, seeking a clarification of the concept of the “letting of immovable property” for the purposes of the Sixth VAT Directive.

First of all, the Court observes that the concept of the letting of immovable property has its own independent meaning in Community law. It must be interpreted strictly, since it constitutes an exception to the general principle that VAT is to be levied on all services supplied for consideration, but must not be construed in such a way as to deprive it of its effect.

Next, it refers to the definition of the concept of the letting of immovable property, arising from its earlier case-law, namely the conferring by a landlord on a tenant, for an agreed period and in return for payment, of the right to occupy property as if the tenant was the owner and to exclude any other person from enjoyment of such a right.

Lastly, the Court clarifies the scope of each of the parts of that definition:

- As regards the period, it states that the actual period of the letting is not the decisive element in determining whether a contract is one for the letting of immovable property. It is therefore not essential that that period be fixed at the time the contract is concluded, since it may be amended by the parties during the performance of the contract.

- As regards payment, the Court states that a payment which is strictly linked to the period of occupation of the property best reflects the passive nature of a letting transaction, but that that does not preclude payments in consideration of other factors, particularly where those factors are plainly accessory or pay for no service other than the simple making available of the property.

- As regards the right of exclusive occupation of the property, the Court states that it may be restricted in the contract concluded with the landlord. Thus, the landlord may reserve the right regularly to visit the property and the contract may relate to certain parts of the property which must be used in common with other occupiers.

The Court accordingly concludes that transactions by which one company grants associated companies a licence to occupy property in return for a payment set essentially on the basis of the area occupied and by which the contracts, as performed, have as their essential object the making available, in a passive manner, of premises in return for a payment linked to the passage of time are transactions comprising the “letting of immovable property” and not the provision of a service capable of being categorised in a different way.

It is for the national court to establish whether the contracts at issue fall within that definition.

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Available languages: FR, EN, IT and GR

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](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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