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Press and Information

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Advocate General's Opinion in Case C-475/03

Banca Popolare di Cremona v Agenzia Entrate Ufficio Cremona

ADVOCATE GENERAL STIX-HACKL CONCLUDES THAT THE SIXTH VAT DIRECTIVE PRECLUDES A TAX SUCH AS THE ITALIAN "IRAP"

However, she proposes that the Court's judgment should only come into effect at the end of the tax year in which it is delivered, except in relation to those persons having commenced legal proceedings prior to a certain date.

Banca Popolare di Cremona is seeking reimbursement of sums paid under the Italian imposta regionale sulle attività produttive (IRAP), a regional tax imposed on natural and legal persons at a basic rate of 4.25% of the net value deriving from their production in the region. The rate may vary by one percent from region to region and the calculation of net value varies depending on the type of organisation concerned.

The request was brought before the Commission Tributaria Provinciale de Cremona (Cremona Regional Tax Court) which has asked the Court of Justice whether IRAP is compatible with provisions of the Sixth VAT Directive¹ prohibiting Member States from introducing or maintaining VAT-like systems of taxation so as not to prejudice the proper functioning of VAT.

On 17 March 2005 Advocate General Jacobs delivered his Opinion in this case, concluding that a national tax with the characteristics of the IRAP was prohibited by the Sixth VAT Directive. However, because such a result would require the reimbursement of large sums of tax levied contrary to Community law, seriously disrupting regional funding in Italy, and because the Commission appeared to have contributed to the Italian Government's belief that IRAP was compatible with Community law, he recommended that the Court fix a temporal limitation on its ruling. Moreover he proposed a new approach to such a limitation, perhaps, although giving a ruling pursuant to which IRAP must be found unlawful none the less fixing a future date before which individuals could not rely on that unlawfulness in any claims against the State.

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 (OJ 1977 L 145, p. 1)

The oral procedure was then reopened and at a second hearing on 14 December 2005 the Court heard further submissions from Banca Popolare, the Commission and certain Member States.

In her Opinion today, First Advocate General Christine Stix-Hackl, who was assigned to the case following Advocate General Jacobs's departure from the Court on 10 January 2006, concurs with Mr Jacobs that **IRAP, as described by the referring court, possesses the essential characteristics of VAT**, in terms of generality of application, proportionality to price, the fact that it is charged at each stage of the production and distribution process and the fact that it is imposed on the value added to a supply at each stage with a mechanism for deduction of that tax paid at previous stages – **provided that the ratio between the amounts paid by a representative sample of business in IRAP and VAT is substantially constant**. It is for the national court to determine whether this is so having regard to IRAP's characteristics. **If it is so, IRAP would be prohibited by the Sixth VAT Directive.**

As regards the issue of temporal limitation, Advocate General Stix-Hackl agrees with Advocate General Jacobs that, on the basis of the undisputed evidence put to the Court, notably that the Commission assured Italy that IRAP would be compatible with Community law and that the Italian government estimates the amount to be reclaimed to stand at 120 billion euro, **a temporal limitation on the effects of the judgment is justified.**

In relation to the limitation itself, Mrs Stix-Hackl suggests that it would be appropriate to fix a future date for the Court judgment to come into effect, thereby allowing Italy time to enact a new measure. Realistically, the Italian authorities cannot be expected to change their whole system of regional financing overnight, and allowing all taxpayers to rely immediately on the judgment of the Court would be tantamount to abolishing the tax with immediate effect. The **Advocate General therefore suggests that the judgment take effect at the end of the tax period during which the Court gives its judgment**; if a judgment is delivered this year it would take effect as of the end of 2006.

Given the specific circumstances of this case, an **exception** to this limitation should, in Advocate General Stix-Hackl's view, be made **for all those who had commenced legal proceedings for reimbursement prior to the delivery of Advocate General Jacobs's Opinion on 17 March 2005**. In her view it was at this date that a real likelihood emerged that the Court would give a ruling resulting in IRAP being incompatible with Community law. This date therefore seems the most appropriate to distinguish between earlier claims and potentially speculative claims brought when the probability of success was deemed to be high.

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 CS DE ES EL FR HU IT NL PL PT SK SL

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&Submit=rechercher&numaff=C-475/03>

It can usually be consulted after midday (CET) on the day of delivery.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731