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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
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EUROPEISKA GEMENSKAPERNAS DOMSTOL

## Press and Information

### **PRESS RELEASE No 71/07**

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Judgment of the Court of Justice in Joined Cases C-283/06 and C-312/06

*KÖGÁZ Rt., E-ON IS Hungary Kft, E-ON DÉDÁSZ Rt., Schneider Electric Hungária Rt.,  
TESCO Áruházak Rt., OTP Garancia Biztosító Rt., OTP Bank Rt., ERSTE Bank Hungary Rt.,  
Vodafone Magyarország Mobil Távközlési Rt. v. Zala Megyei Közigazgatási Hivatal Vezetője  
OTP Garancia Biztosító Rt. v. Vas Megyei Közigazgatási Hivatal*

### **THE HUNGARIAN LOCAL BUSINESS TAX IS COMPATIBLE WITH COMMUNITY LAW**

*It has characteristics which distinguish it from value added tax (VAT)*

The Hungarian Act on Local Taxes<sup>1</sup> authorises municipalities in Hungary to introduce, within their territory, a local business tax (HIPA). After Hungary's accession to the European Union, a number of Hungarian companies initiated legal proceedings seeking a declaration that HIPA is incompatible with the Sixth VAT Directive.<sup>2</sup>

Two Hungarian courts applied to the Court of Justice of the European Communities for a ruling on the compatibility of HIPA with the Sixth VAT Directive, and specifically with the prohibition<sup>3</sup> on Member States' introducing or maintaining tax schemes which can be characterised as turnover taxes.

The Court first re-iterates the objectives of the introduction of a common system of VAT: to establish a common market whose characteristics are similar to those of a domestic market by eliminating tax differences liable to distort competition and hinder trade. That system is supposed to replace the turnover taxes in force in the various Member States. Consequently, it does not permit maintaining or introducing taxes which can be characterised as turnover taxes. On the other hand, it does not preclude the maintenance or introduction of a tax which does not display one of the essential characteristics of VAT.

The Court then examines and compares the fundamental characteristics of the two taxes.

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<sup>1</sup> Act C of 1990

<sup>2</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), as amended by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1).

<sup>3</sup> Prohibition under Article 33 of the Sixth VAT Directive

VAT, under the common system, applies generally to transactions relating to goods or services; it is proportional to the price of the goods or services; it is charged at each stage of the production and distribution process and the amounts paid during the preceding stages can be deducted from the VAT payable by a taxable person (the final burden rests ultimately on the consumer).

HIPA is, by contrast, based on the difference between, on the one hand, the turnover linked to the goods sold or the services supplied during a fiscal period and, on the other, the purchase price of the goods sold, the value of the intermediary services and the costs of the materials. Since HIPA is therefore calculated on the basis of periodic turnover, it is not possible to determine the precise amount of that charge which may be being passed on to the client when each sale is effected or each service supplied, such that **the condition that this amount should be proportional to the price charged by the taxable person is not satisfied.**

Furthermore, even on the assumption that a taxable person liable to HIPA selling to final consumers will take account, in fixing his price, of the amount of the charge included in his general expenses, **not all taxable persons have the possibility of passing on, or passing on in full, the burden of the tax to the final consumer.**

Accordingly, the Court concludes that HIPA differs from VAT such that it cannot be deemed to be a tax which can be characterised as a turnover tax for the purposes of the Sixth VAT Directive. It follows that a charge to tax with characteristics such as those of HIPA is **compatible with the Sixth VAT Directive.**

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

*Languages available: EN FR HU PL SK*

*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-283/06>*

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

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