

СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ  
TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ  
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU TIESA



EUROPOS BENDRIJŲ TEISINGUMO TEISMAS  
AZ EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
CURTEA DE JUSTIȚIE A COMUNITĂȚILOR EUROPENE  
SÚDNY DVOR EURÓPSKÝCH SPOLEČENSTEV  
SODIŠČE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

**PRESS RELEASE No 55/08**

17 July 2008

Judgment of the Court of Justice in Case C-132/06

*Commission v Italy*

**THE COURT OF JUSTICE DECLARES THAT THE ITALIAN TAX AMNESTY FOR  
VAT IS UNLAWFUL**

*The general and indiscriminate waiver of verification of taxable transactions favours those  
guilty of tax evasion*

Italian legislation<sup>1</sup> makes it possible, as regards the years 1998 to 2001, for persons taxable for VAT purposes to correct past tax returns by filing a ‘Supplementary return’ accompanied by payment of the additional VAT, which is calculated by applying the provisions in force during each of the tax periods.

Moreover, an ‘Automatic settlement’ procedure enables taxable persons who have not filed a return to pay an amount equal to (or less than) 2% of the VAT payable on supplies of goods or services, and 2% of the VAT deducted during the same period.

The effect of using either mechanism is that, for the person concerned, fiscal administrative penalties lapse, no criminal penalties can be applied and no further tax verifications are possible (up to, however, double the amount of the VAT as it appears from the supplementary return in respect of that procedure).

The Commission maintains that, by explicitly providing for a general waiver of verification of taxable transactions effected in a series of tax years, the Italian Republic has failed to fulfil its obligations under the Sixth Directive and the general principle of cooperation in good faith. The Commission adds that the Sixth Directive is intended to make sure that the national tax authorities possess the necessary means of enforcement through controls in order to ensure the correct levying and collection of VAT through an effective strategy of verification and combating tax evasion. The Commission argues that it is inconceivable that a Member State may unilaterally release itself from the obligation to make certain categories of taxable transactions subject to VAT.

The Court points out, first, that it is for each Member State to take all legislative and administrative measures appropriate for ensuring collection of all of the VAT due on its territory, by checking returns, and calculating and collecting the tax due. Although the Member States

---

<sup>1</sup> Law No 289 of 27 December 2002 (ordinary supplement No 240/L to GURI No 305 of 31 December 2002).

enjoy a certain measure of latitude, inter alia, as to how they use the means at their disposal, they are nevertheless bound by the obligation to ensure effective collection of the Community's own resources and not to create differences in the manner in which taxable persons are treated.

The Italian legislation provides taxable persons with a powerful incentive either to declare only part of the debt actually due or to pay a lump sum in lieu of an amount proportionate to the turnover achieved, thereby escaping all controls and all penalties.

The Court finds that the effect of the considerable imbalance between the amounts actually due and the amounts paid by taxable persons taking advantage of the tax amnesty is tantamount to a tax exemption which, on account of its breadth<sup>2</sup>, seriously disrupts the proper functioning of the common system of VAT and compromises the common market because, in Italy, it is realistic for taxable persons to hope not to be required to pay a large portion of their tax debt.

The Court also rejects the justification put forward by Italy, which contends that the tax amnesty has enabled the public purse to recover part of the VAT not initially declared immediately and without having to engage in lengthy legal proceedings. The Court considers, on the contrary, that the measure in question – introduced very shortly after the expiry of the deadlines by which taxable persons should have paid VAT and requiring payment of an amount which is paltry as compared with the VAT actually due – enables the taxable persons concerned to escape once and for all their VAT obligations, despite the fact that the national tax authorities would have been able to detect the irregularities.

**The Court therefore censures as unlawful the general and indiscriminate waiver of verification of transactions taxable for VAT purposes effected in a series of tax years, by which the Italian Republic has failed to fulfil its obligations under the Sixth Directive and the general principle of cooperation in good faith.**

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

*Languages available: FR DE EN HU IT*

*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-132/06>

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

*For further information, please contact Christopher Fretwell*

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

*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,*

*L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249*

*or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956*

---

<sup>2</sup> According to the figures provided by the Italian Republic, nearly 15% of taxpayers, that is approximately 800 000, sought to take advantage of the tax amnesty in 2001.