



Press and Information

Court of Justice of the European Union
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Judgment in Case C-251/16
Edward Cussens and Others v T.G. Brosnan

The prohibition of abusive practices in the sphere of VAT is applicable regardless of a national measure giving effect to it in Member States

It is a general principle of EU law which does not require a national measure transposing it

Mr Cussens, Mr Jennings and Mr Kingston jointly owned a development site in Ireland on which they constructed 15 holiday homes intended for sale.

Before making the sales, those co-owners carried out, in 2002, a number of transactions with a company associated with them, namely Shamrock Estates. On 8 March 2002 they entered into two leases with that company, namely (i) a lease by which they granted it those properties for a term of 20 years and one month from that date ('the long lease') and (ii) a lease under which Shamrock Estates leased the properties back to them for a term of two years.

On 3 April 2002 those two leases were extinguished by mutual surrender of the lessees, and the co-owners therefore recovered full ownership of the properties. In May 2002 the co-owners sold all the properties to third parties, who acquired full ownership of them. Under Irish VAT legislation, no VAT was payable on those sales, as the properties had previously been the subject of a first supply on which VAT was chargeable, when the long lease was granted. VAT was chargeable only on the long lease.

By tax assessment of 27 August 2004, the Irish tax authority (the Revenue Commissioners) asked the co-owners to pay additional VAT, in respect of the property sales carried out in May 2002. The Revenue Commissioners took the view that the leases constituted a first supply artificially created in order to avoid the subsequent sales being liable to VAT and that supply should therefore be disregarded for the purposes of assessing VAT.

The co-owners appealed against that decision. The High Court (Ireland) held that, as the leases lacked commercial reality, they constituted an abusive practice within the meaning of the case-law stemming from the judgment of the Court of Justice in *Halifax*.¹ It held that the principle that abusive practices are prohibited, as resulting from that case-law, requires abusive measures to be redefined in accordance with reality, even in the absence of national legislation transposing that principle.

The Supreme Court (Ireland), before which the co-owners brought an appeal, asked the Court of Justice whether that principle is capable, regardless of a national measure giving effect to it in the domestic legal order, of being applied directly in order to refuse to exempt sales of immovable property from VAT. In addition, the Supreme Court raised the issue whether such application of the principle was consistent with the principles of legal certainty and of the protection of legitimate expectations, given that the transactions at issue were carried out before the judgment in *Halifax* was delivered.

In today's judgment, the Court observes, first of all, that the principle that abusive practices are prohibited, as applied in the judgment in *Halifax* to the provisions of the VAT Directive,² is not a

¹ Case: [C-255/02 Halifax and Others v Commissioners of Customs and Excise](#), see Press Release No. [15/06](#).

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).

rule established by a directive. On the contrary, that principle is based on settled case-law that, first, EU law cannot be relied on for abusive or fraudulent ends and, secondly, the application of EU legislation cannot be extended to cover abusive practices by economic operators.

The Court explains next that that case-law has been formulated in various areas of EU law. Furthermore, the principle that abusive practices are prohibited is applied to the rights and advantages provided for by EU law irrespective of whether those rights and advantages have their basis in the Treaties, in a regulation or in a directive. Thus, according to the Court, the principle in question displays the general, comprehensive character which is naturally inherent in general principles of EU law. Consequently, **it may be relied on against a taxable person to refuse him, inter alia, the right to exemption from VAT, even in the absence of provisions of national law providing for such refusal.**

Finally, **the Court confirms that such application of the principle that abusive practices are prohibited is consistent with the principles of legal certainty and of the protection of legitimate expectations, even if its application concerns transactions carried out before the judgment in *Halifax* was delivered.** The Court points out in this regard that **the interpretation which it gives to EU law clarifies and defines the meaning and scope of that law as it must be, or ought to have been, understood from the date of its entry into force. It therefore follows that, unless there are exceptional circumstances, EU law as thus interpreted must be applied by the courts even to legal relationships which arose and were established before the judgment ruling on the request for interpretation.** Furthermore, in the judgment in *Halifax* the Court did not restrict the temporal effects of its interpretation of the principle that abusive practices are prohibited in the sphere of VAT, and such a restriction can be allowed only in the actual judgment ruling upon the interpretation requested.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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