

Case C-98/98

Commissioners of Customs & Excise

v

Midland Bank plc

(Reference for a preliminary ruling
from the High Court of Justice (England & Wales), Queen's Bench Division
(Divisional Court))

(Value added tax — First and Sixth VAT Directives — Deduction of input tax —
Taxable person carrying out both taxable and exempt transactions — Attribution
of input services to output transactions — Need for a direct and immediate link)

Opinion of Advocate General Saggio delivered on 30 September 1999 . . . 1-4179
Judgment of the Court (Second Chamber), 8 June 2000 1-4198

Summary of the Judgment

*Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value
added tax — Deduction of input tax — Taxable person carrying out both taxable and
exempt transactions — Tax on services provided for VAT-deductible and non-deductible*

transactions — Right to deduct — Condition — Existence of a direct and immediate link with VAT-deductible output transactions
(Council Directives 67/227, Art. 2, and 77/388, Art. 17(2), (3) and (5))

Article 2 of the First Directive 67/227 and Article 17(2), (3) and (5) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes must be interpreted as meaning that, in principle, the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to entitlement to deduct is necessary before the taxable person is entitled to deduct input value added tax and in order to determine the extent of such entitlement.

It is for the national court to apply the 'direct and immediate link' test to the facts of each case before it. A taxable person who makes transactions in respect of which value added tax is deductible and transactions in respect of which it is not may deduct the value added tax in respect of the

goods or services acquired by him, provided that such goods or services have a direct and immediate link with the output transactions in respect of which value added tax is deductible, without it being necessary to take into account Article 17(2), (3) or (5) of the Sixth Directive 77/388. However, such a taxable person cannot deduct in its entirety the value added tax charged on input services where they have been utilised not for the purpose of carrying out a deductible transaction but in the context of activities which are no more than the consequence of making such a transaction, unless that person can show by means of objective evidence that the expenditure involved in the acquisition of such services is part of the various cost components of the output transaction.

(see paras 24, 33 and operative part 1-2)