

Case C-230/94

Renate Enkler

v

Finanzamt Homburg

(Reference for a preliminary ruling  
from the Bundesfinanzhof)

(Sixth VAT Directive — Definition of economic activity — Taxable amount)

Opinion of Advocate General Cosmas delivered on 28 March 1996 .....	I - 4519
Judgment of the Court (Fourth Chamber), 26 September 1996 .....	I - 4537

Summary of the Judgment

- 1. Tax provisions — Harmonization of laws — Turnover taxes — Common system of value added tax — Economic activities within the meaning of Article 4 of the Sixth Directive — Hiring out of tangible property — When included — Carrying on of activity for the purpose of obtaining income therefrom on a continuing basis — Criteria  
(Council Directive 77/388, Art. 4(2))*
- 2. Tax provisions — Harmonization of laws — Turnover taxes — Common system of value added tax — Taxable amount — Private use of business assets bought with a right to deduct — Expenses incurred during a period when the asset was available for use by the taxable person for non-business purposes included in the taxable amount — Whether permissible — Limits  
(Council Directive 77/388, Arts 6(2) and 11A(1)(c))*

1. The hiring out of tangible property constitutes exploitation of such property which must be classified as an 'economic activity' within the meaning of Article 4(2) of the Sixth Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes if it is done for the purpose of obtaining income therefrom on a continuing basis.

Where, as in the case of a motor caravan, the property is, by reason of its nature, capable of being used for both economic and private purposes, all the circumstances in which it is used will have to be examined in order to determine whether it is actually used for the purpose of obtaining income on a continuing basis. The circumstances in which the property is actually used may be compared with the circumstances in which the corresponding economic activity is usually carried out and, although the result for the user cannot itself make it possible to determine whether the activity is carried

on for the purpose of obtaining income on a continuing basis, it is appropriate to take into account the actual length of the period for which the property is hired, the number of customers and the amount of earnings.

2. Article 11A(1)(c) of the Sixth Directive is to be interpreted as meaning that the taxable amount for turnover tax on transactions treated as supplies of services under Article 6(2)(a) of the directive must include expenses which are incurred during a period in which the goods are at the taxable person's disposal in a way that he can actually use them at any time for non-business purposes and which relate to the goods themselves or which the taxable person is entitled to deduct for VAT purposes. The portion of the expenses to be included must be proportionate to the ratio between the total duration of actual use of the goods and the duration of actual use for non-business purposes.