

Case C-384/04

Commissioners of Customs & Excise and Attorney General

v

Federation of Technological Industries and Others

(Reference for a preliminary ruling from the Court of Appeal
(England and Wales) (Civil Division))

(Sixth VAT Directive — Articles 21(3) and 22(8) — National measures to combat
fraud — Joint and several liability for the payment of VAT — Provision of security
for VAT payable by another trader)

Opinion of Advocate General Poiares Maduro, delivered on 7 December 2005 1 - 4194
Judgment of the Court (Third Chamber), 11 May 2006 1 - 4210

Summary of the Judgment

*1. Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Persons liable for the tax
(Council Directive 77/388, Art. 21(3))*

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Obligations of persons liable for the tax*
(Council Directive 77/388, Arts 21(3) and 22(8))

1. Article 21(3) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directives 2000/65 and 2001/115, permits Member States to enact measures under which a person is to be jointly and severally liable to pay a sum in respect of value added tax payable by another person made liable by one of the provisions of Article 21(1) and (2).

Such legislation must, however, comply with the general principles of law which form part of the Community legal order and which include, in particular, the principles of legal certainty and proportionality. In particular, while Article 21(3) of the Sixth Directive allows reliance to be placed on presumptions that the person concerned knew or should have known that the tax would go unpaid, such presumptions may not be formulated in such a way as to make it practically impossible or excessively difficult for that person to rebut them with evidence to the contrary.

(see paras 28, 32, 35, operative part 1)

That provision is to be interpreted as allowing a Member State to enact legislation which provides that a taxable person, to whom a supply of goods or services has been made and who knew, or had reasonable grounds to suspect, that some or all of the value added tax payable in respect of that supply, or of any previous or subsequent supply, would go unpaid, may be made jointly and severally liable, with the person who is liable, for payment of that tax.

2. Article 22(8) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directives 2000/65 and 2001/115, is to be interpreted as not allowing a Member State to enact either legislation which provides that a taxable person, to whom a supply of goods or services has been made and who knew, or had reasonable grounds to suspect, that some or all of the value

added tax payable in respect of that supply, or of any previous or subsequent supply, would go unpaid, may be made jointly and severally liable, with the person who is liable, for payment of that tax, or legislation which provides that a taxable person may be required to provide security for the payment of that tax which is or could become payable by the taxable person to whom he supplies those goods or services or by whom they are supplied to him.

By contrast, that provision does not preclude a national measure which imposes on any person who is, pursuant to a national measure adopted on the basis of Article 21(3) of the Sixth Directive, jointly and severally liable for payment of the tax, a requirement to provide security for the payment of that tax which is due.

(see paras 47-48, operative part 2)