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JUDGEMENT IN CASE C-475/03 (BANCA POPOLARE DI CREMONA): COMPATIBILITY OF IRAP WITH SIXTH VAT DIRECTIVE

Today the ECJ has issued its judgement in Case C-475/03 (Banca Popolare di Cremona) stating that IRAP is compatible with the VAT legislation.

IRAP is an Italian tax levied on companies, partnerships and individuals, introduced in Italy in 1998. The ordinary tax rate is equal to 4.25%. IRAP is levied on an amount calculated by deducting production costs from the sales value but excluding principally labor costs.

In 1999, an Italian bank (Banca Popolare di Cremona), requested a reimbursement from the Italian Tax Authorities of the IRAP paid, arguing that the tax was unlawful, because it was contrary to the VAT legislation (Article 33 of the Sixth VAT Directive prohibits EU Member States from introducing "any taxes, duties or charges which can be characterized as turnover taxes"). After the reimbursement denial from the Italian Tax Authorities, the Cremona Tax Court referred the case to the ECJ.

The judgement has taken three years to be issued due to the fact that the first opinion of the AG Jacobs, delivered on 17 March 2005, was not sufficient and it was necessary to reopen the oral procedure (in which 14 Member States participated), in order to hear further arguments on the limitation of the temporal effects of the judgement. Finally a second opinion, by the AG Stix-Hackl, was delivered on 14 March 2006.

The two AG considered IRAP incompatible with the Sixth Directive because the Italian tax displays all of the four essential features of VAT:

1. it applies generally to supplies of goods or services;
2. it is proportional to the price of those goods or services, whatever the number of transaction carried out;
3. it is charged at each stage of the production and distribution process;
4. it is imposed on the value added of the goods and/or services in question and the final burden of the tax rests ultimately on the consumer.

Challenging the opinions of the Advocates General, the Court stated that IRAP did not show two of the four essential features of VAT.

The Court first pointed out that any comparison of the characteristics of a tax such as IRAP with those of VAT must be made in the light of the objective pursued by the common system of VAT (of harmonisation of legislation concerning turnover taxes in order to establish a common market).

In particular, the Court observed that, with reference to the second essential characteristic, whereas VAT is levied on individual transactions at the marketing stage and its amount is proportional to the price of goods or services supplied, IRAP is, in contrast, a tax charged on the net value of the production of an undertaking in a given period.

Referring to the fourth essential characteristic, the Court stated that a tax, such as IRAP, levied on production in such a way that it is not certain that it will be borne, like a tax on consumption such as VAT, by the final consumer, is likely to fall outside the scope of Article 33 of the Sixth VAT Directive.

As a consequence, the Court stated that Article 33 of the Sixth VAT Directive must be interpreted as meaning that it does not preclude the maintenance of a tax having the characteristics of IRAP.

Regarding the interesting matter of the temporal limitation of the effects of the decision, the Court consequently did not adopt any position.

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