



C-132/06 Commission v Italy, judgment of 17 July 2008
Taxation – VAT – tax amnesty

The Court finds that a tax amnesty in relation to VAT infringes Community law.

Italy had adopted Law No 289/2002, which in respect of the years 1998 to 2001 provided for two mechanisms allowing persons liable to pay VAT to submit simplified returns or forego submitting any returns at all and making flat-rate payments, with the guarantee of subsequent exemption from any tax verifications and the lapsing of administrative and criminal penalties.

The Commission initiated infringement proceedings against Italy for a declaration that, by the general and indiscriminate waiver of verification of taxable transactions in respect of VAT which stems from that law, Italy had failed to fulfil its obligations under the Sixth VAT Directive and infringed the general principle of sincere cooperation.

The Court of Justice, before which the Commission had brought an action, recalled first of all that it is for every Member State to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory by checking returns and then calculating and ensuring collection of the tax due. Although the Member States enjoy a certain measure of latitude when applying the instruments at their disposal, they are nevertheless subject to the obligation to ensure effective collection of the Community's own resources and not to create significant differences in the manner in which taxable persons are treated.

The Court went on to find that the law in question provides taxable persons with a powerful incentive either to declare only part of the tax debt actually due or to pay a very reduced lump sum in lieu of an amount proportionate to the turnover achieved, thus escaping any controls and any penalties. The Court held that the effect of the considerable imbalance between the amounts actually due and those paid by taxable persons taking advantage of the tax amnesty is tantamount to a tax exemption, the scale of which seriously disrupts the proper functioning of the common system of VAT and affects the common market.

Finally, the Court rejected the justification put forward by Italy to the effect that the tax amnesty had the advantage of having enabled the public purse to recover part of the VAT not initially declared immediately and without having to engage in lengthy legal proceedings. On the contrary, it took the view that the measure at issue – introduced very shortly after the expiry of the deadlines by which taxable persons should have paid VAT and requiring payment of an amount which is paltry as compared with the VAT actually due – enables the taxable persons concerned to escape once and for all their VAT obligations, even though the national tax authorities might have detected irregularities.

The Court therefore concluded from this that Italian law No 289/2002 constitutes an infringement of the Sixth VAT Directive and the duty of sincere cooperation.