ECJ jurisprudence in the field of indirect taxation: the main criteria

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Overview

• Value Added Tax
• Car taxation
• Excise duties
Value Added Tax

• In order for a “supply for consideration” to exist for VAT purposes, a “direct link” must exist between the supply and the amount received.

Case 154/80, Cooperatieve, judgment of 5 February 1981.
Value Added Tax

• Taxable person:
  – Holding companies: case C-60/90, Polysar, judgment of 20 June 1991.
  – Public bodies: Case C-446/98, Fazenda publica, judgment of 14 December 2001.
Value Added Tax

- Taxable amount.
  - Undervalued supplies: Case C-412/03, Hotel Scandic, judgment of 20 January 2005.
Value Added Tax

• Deductions.
  - Restrictions to the right to deduct: case C305/97, Royscott, judgment of 5 October 1999.
Value added Tax

- Carousel fraud: economic activity + possibility of joint and several liability.
  - Case C-354/03, Optigen, judgment of 12 January 2006.
Value Added Tax

Abuse of rights: prohibition of abusive practices in the field of VAT.

- Case C-255/02, Halifax.
Value Added Tax

• Measures of collection: competence of Member States with due respect to the principle of proportionality.
  
Car taxation

- Member States may levy a registration tax, provided there is no discrimination precluded under Article 90 EC.

  - Case C-345/93, Nunes Tadeu, judgment of 9 March 1995.
Car taxation

- The criteria in order to assess whether Article 90 EC is infringed.
  - Case C-375/95, Commission vs Greece, judgment of 23 October 1997.
  - Case C-101/00, Siilin, judgment of 19 September 2002.
Car taxation

The rates of the tax may be fixed by Member States at the level they see fit, provided no discrimination occurs.

- Case C-383/01, De Danske Bilimportører, judgment of 17 June 2003).
Car taxation

Cases of transfer of residence: non application of Directive 83/183/EEC.

Car taxation

- Transfrontier workers: respect of Article 39 EC
  - Case C-464/02, Commission vs Denmark, judgment of 15 September 2005.
Excise duties

- Compatibility of a national levy with both VAT and the harmonized rules on excise duties.
Excise duties

- Rates applied to tobacco products.

  - Case C-302/00, Commission vs France, judgment of 27 February 2002.