

Joined Cases C-308/96 and C-94/97

Commissioners of Customs and Excise

v

**T. P. Madgett and R. M. Baldwin, trading as The Howden Court Hotel
and**

T. P. Madgett and R. M. Baldwin, trading as The Howden Court Hotel

v

Commissioners of Customs and Excise

(References for a preliminary ruling
from the High Court of Justice of England and Wales, Queen's Bench Division, and
the VAT and Duties Tribunal, London)

(VAT — Article 26 of the Sixth VAT Directive — Scheme
for travel agents and tour operators — Hotel undertakings —
Accommodation and travel package — Basis of calculation of the margin)

Opinion of Advocate General Léger delivered on 30 April 1998 I - 6231

Judgment of the Court (Fifth Chamber), 22 October 1998 I - 6248

Summary of the Judgment

- 1. Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Special scheme for travel agents — Scope — Package travel organised by traders other than travel agents — Included
(Council Directive 77/388, Art. 26)*

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Special scheme for travel agents — Scope — Travel packages consisting partly of in-house services and partly of services bought in from third parties — Application of the special scheme to the in-house services — Excluded — Method of calculating the taxable margin*
(Council Directive 77/388, Art. 26)

1. The special scheme for travel agents and tour operators under Article 26 of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes applies to traders, even if they are not, formally speaking, travel agents or tour operators, who organise travel or tour packages in their own name and entrust other taxable persons with the supply of the services generally associated with that kind of activity. However, a trader should not be taxed under Article 26 where the services bought in from third parties remain purely ancillary in relation to the in-house services.
2. Article 26 of the Sixth Directive 77/388 must be interpreted as meaning that where a trader subject to that article effects, in return for a package price, transactions consisting of services supplied partly by himself and partly by other taxable persons, the value added tax scheme under that article applies solely to the services supplied by third parties.

It follows that Article 26 applies to a hotelier who, in return for a package price, habitually offers his customers, in addition to accommodation, return transport between certain distant pick-up points and the hotel and a coach excursion during their stay, those transport services being bought in from third parties.

A trader may not be required to calculate the part of the package corresponding to the in-house services by the actual cost method where it is possible to identify that part of the package on the basis of the market value of services similar to those which form part of the package.