

Case C-390/96

Lease Plan Luxembourg SA

v

Belgian State

(Reference for a preliminary ruling
from the Rechtbank van Eerste Aanleg, Brussels)

(Sixth VAT Directive — Car-leasing services — Fixed establishment —
Rules governing reimbursement of VAT to taxable persons not established
in the territory of the State — Principle of non-discrimination)

Opinion of Advocate General Fennelly delivered on 18 December 1997 I - 2555
Judgment of the Court (Fifth Chamber), 7 May 1998 I - 2571

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Supply of services — Determination of relevant place for tax purposes — 'Fixed establishment' within the meaning of the Sixth Directive — Definition — Company hiring out or leasing vehicles to customers established in another Member State (Council Directive 77/388, Art. 9(1) and (2)(e))*

2. *Freedom to provide services — Principle of non-discrimination — Tax legislation — Reimbursement of value added tax to taxable persons not established in the territory of the country — National legislation providing for interest payable only from the date of service of notice to pay on the Member State and at a lower rate than that applied to the interest paid to taxable persons established in the territory of that State automatically on the expiry of the statutory time-limit for reimbursement — Not permissible*
(EC Treaty, Art. 59; Council Directive 79/1072)

1. The term 'fixed establishment' in Article 9(1) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes must be interpreted in such a way that an undertaking established in one Member State which hires out or leases a number of vehicles to clients established in another Member State does not possess a fixed establishment in that other State merely by engaging in that hiring out or leasing.

Moreover, it is clear from both the wording and the aim of Article 9(1) and 9(2)(e) of the Sixth Directive, and from the case-law of the Court, that neither the physical placing of vehicles at customers' disposal under leasing agreements nor the place at which they are used can be regarded as a clear, simple and practical criterion, in accordance with the spirit of the Sixth Directive, on which to base the existence of a fixed establishment.

When a leasing company does not possess in a Member State either its own staff or a structure which has a sufficient degree of permanence to provide a framework in which agreements may be drawn up or management decisions taken and thus to enable the services in question to be supplied on an independent basis, it cannot be regarded as having a fixed establishment in that State.

2. It is contrary to Article 59 of the Treaty for national rules to provide that taxable persons not established in a Member State, who apply for a refund of value added tax in accordance with the Eighth Directive 79/1072 on the harmonisation of the laws of the Member States relating to turnover taxes, are entitled to interest only from such time as notice to pay was served on that Member State and at a lower rate than that applied to the interest paid to taxable persons established in the territory of that State automatically on the expiry of the statutory time-limit for reimbursement.