

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of Council Directive 92/12/EEC of 25 February on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — Refusal of a Member State to repay the amount paid for tax markings attached to tobacco products which then irregularly left the duty suspension arrangements of another Member State with the consequence that excise duty was paid in the latter State — Theft of cigarettes.

Operative part of the judgment

Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as amended by Council Regulation (EC) No 807/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (unanimity), does not preclude the legislation of a Member State which excludes the reimbursement of the amount paid to obtain tax markings issued by that Member State when those markings have been affixed to products subject to excise duty before being released for consumption in that Member State, when those products have been stolen in another Member State, involving the payment of excise duties in that other Member State, and when evidence has not been furnished that the stolen products will not be marketed in the Member State which issued those markings.

(¹) OJ C 326, 30.12.2006.

Judgment of the Court (Third Chamber) of 13 December 2007 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Landesanstalt für Landwirtschaft v Franz Götz

(Case C-408/06) (¹)

(Sixth VAT Directive — Economic activity — Taxable persons — Bodies governed by public law — Milk-quota sales point — Transactions of agricultural intervention agencies and staff shops — Significant distortions of competition — Geographic market)

(2008/C 51/35)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Landesanstalt für Landwirtschaft

Defendant: Franz Götz

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the second and third subparagraphs of Article 4(5) of and points 7 and 12 in Annex D to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Allocation of reference quantities of milk invoiced without a separate statement of the VAT — Assessment of the classification as a taxable person of a body established by a Land which transfers reference quantities of milk to milk producers against prepayment

Operative part of the judgment

1. A milk-quota sales point is neither an agricultural intervention agency within the meaning of the third subparagraph of Article 4(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2001/4/EC of 19 January 2001, read in conjunction with point 7 of Annex D thereto, nor a staff shop within the meaning of the third subparagraph of Article 4(5) of that directive, read in conjunction with point 12 of Annex D thereto;
2. The treatment of a milk-quota sales point as a non-taxable person in respect of activities or transactions in which it engages as a public authority, within the meaning of Article 4(5) of the Sixth Directive, as amended by Directive 2001/4/EC, cannot give rise to significant distortions of competition, by reason of the fact that it is not faced, in a situation such as that at issue in the main proceedings, with private operators providing services which are in competition with the public services. As that finding applies in respect of all milk-quota sales points operating within a given delivery reference quantity transfer area, defined by the Member State concerned, that area constitutes the relevant geographic market for the purpose of establishing whether there are significant distortions of competition.

(¹) OJ C 310, 16.12.2006.