

Case C-103/09

The Commissioners for Her Majesty's Revenue and Customs

v

Weald Leasing Ltd

(Reference for a preliminary ruling from
the Court of Appeal (England and Wales) (Civil Division)
(United Kingdom))

(Sixth VAT Directive — Concept of 'abusive practice' — Leasing transactions
effected by a group of undertakings to spread the payment
of non-deductible VAT)

Opinion of Advocate General Mazák delivered on 26 October 2010 I - 13591

Judgment of the Court (Third Chamber), 22 December 2010 I - 13607

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Sixth Directive — Transactions constituting an abusive practice — Meaning (Council Directive 77/388)*

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Sixth Directive — Transactions constituting an abusive practice (Council Directive 77/388)*

1. The tax advantage accruing from an undertaking's recourse to asset leasing transactions, instead of the outright purchase of those assets, does not constitute a tax advantage the grant of which would be contrary to the purpose of the relevant provisions of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 95/7, and of the national legislation transposing it, provided that the contractual terms of those transactions, particularly those concerned with setting the level of rentals, correspond to arm's length terms and that the involvement of an intermediate third party company in those transactions is not such as to preclude the application of those provisions, a matter which it is for the national court to determine.

The fact that the undertaking does not engage in leasing transactions in the context of its normal commercial operations is irrelevant in that regard. A finding that there was an abusive practice is inferred, not from the nature of the commercial

operations usually engaged in by the party which made the transactions, but from the object, purpose and effects of those transactions.

(see paras 44-45, operative part 1)

2. If certain contractual terms of leasing transactions to which an undertaking has recourse and/or the intervention of an intermediate third party company in those transactions constitute an abusive practice, those transactions must be re-defined so as to re-establish the situation that would have prevailed in the absence of the elements of those contractual terms which are abusive and/or in the absence of the intervention of that company. In that context, the redefinition must go no further than is necessary for the correct charging of the value added tax and the prevention of tax evasion.

(see paras 52-53, operative part 2)