

Operative part of the judgment

Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national provisions or practices, such as collective agreements, which limit, by a carry-over period of 15 months on the expiry of which the right to paid annual leave lapses, the accumulation of entitlement to such leave of a worker who is unfit for work for several consecutive reference periods.

(¹) OJ C 234, 28.8.2010.

Judgment of the Court (Third Chamber) of 10 November 2011 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) and the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — Commissioners for Her Majesty's Revenue and Customs v The Rank Group plc

(Joined Cases C-259/10 and C-260/10) (¹)

(Taxation — Sixth VAT Directive — Exemptions — Article 13B(f) — Betting, lotteries and other forms of gambling — Principle of fiscal neutrality — Mechanised cash bingo — Slot machines — Administrative practice departing from the legislative provisions — ‘Due diligence’ defence)

(2012/C 25/14)

Language of the case: English

Referring court

Court of Appeal (England and Wales) (Civil Division) and the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom)

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendant: The Rank Group PLC

Re:

Reference for a preliminary ruling — Court of Appeal (England & Wales) (Civil Division) — Interpretation of Article 13B(f) 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 (OJ 1977 L 145, p. 1) — Exemption for betting, lotteries and other forms of gambling — Mechanised cash bingo — National legislation providing for a difference in VAT treatment of supplies which are identical from the point of view of the consumer or meet the same needs of consumers — Difference in treatment according to the amount of the stake and the amount of the prize — Breach of the principle of fiscal neutrality

Operative part of the judgment

1. The principle of fiscal neutrality must be interpreted as meaning that a difference in treatment for the purposes of value added tax of two supplies of services which are identical or similar from the point of view of the consumer and meet the same needs of the consumer is sufficient to establish an infringement of that principle. Such an infringement thus does not require in addition that the actual existence of competition between the services in question or distortion of competition because of such difference in treatment be established;
2. Where there is a difference in treatment of two games of chance as regards the granting of an exemption from value added tax under Article 13B(f) 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, the principle of fiscal neutrality must be interpreted as meaning that no account should be taken of the fact that those two games fall into different licensing categories and are subject to different legal regimes relating to control and regulation;
3. In order to assess whether, in the light of the principle of fiscal neutrality, two types of slot machine are similar and require the same treatment for the purposes of value added tax it must be established whether the use of those types of machine is comparable from the point of view of the average consumer and meets the same needs of that consumer, and the matters to be taken into account in that connection are, inter alia, the minimum and maximum permitted stakes and prizes and the chances of winning;
4. The principle of fiscal neutrality must be interpreted as meaning that a taxable person cannot claim reimbursement of the value added tax paid on certain supplies of services in reliance on a breach of that principle, where the tax authorities of the Member State concerned have, in practice, treated similar services as exempt supplies, although they were not exempt from value added tax under the relevant national legislation;
5. The principle of fiscal neutrality must be interpreted as meaning that a Member State which has exercised its discretion under Article 13B(f) of the Sixth Directive 77/388 and has exempted from value added tax the provision of all facilities for playing games of chance, while excluding from that exemption a category of machines which meet certain criteria, may not contest a claim for reimbursement of VAT based on the breach of that principle by arguing that it responded with due diligence to the development of a new type of machine not meeting those criteria.

(¹) OJ C 209, 31.7.2010.