

Case C-492/10

Immobilien Linz GmbH & Co. KG

v

Finanzamt Freistadt Rohrbach Urfahr

(Reference for a preliminary ruling
from the Unabhängiger Finanzsenat,
Außenstelle Linz)

(Taxation — Directive 69/335/EEC — Indirect taxes — Raising of capital —
Article 4(2)(b) — Transactions subject to capital duty — Increase in the assets of a
company — Contribution made by a member — Absorption of losses by virtue of an
undertaking given before the losses were sustained)

Judgment of the Court (First Chamber), 1 December 2011 I - 12683

Summary of the Judgment

*Tax provisions — Harmonisation of laws — Indirect taxes on the raising of capital — Increase
in the assets of a company*

(Council Directive 69/335, Art. 4(2)(b))

On a proper construction of Article 4(2)(b) of Directive 69/335 concerning indirect taxes on the raising of capital, as amended by Directive 85/303, the absorption by a member of a company's losses pursuant to an undertaking given by the member before the losses were sustained, the sole purpose of which was to cover such losses, does not increase the assets of that company.

exception is justified by the fact that, by virtue of the obligation accepted beforehand by its member, the company in whose favour such an undertaking is entered into will not be able to record a loss, whatever the results of its economic activity, for any losses will automatically be passed on to its member. Consequently, in the specific situation in which such an undertaking has been given before the company records a loss, it is established that the results of the company's economic activity will not affect its economic potential.

Although the absorption by a member of losses incurred by a company must, in principle, be regarded as a contribution increasing the company's assets, that is not the case in the circumstances mentioned above. That

(see paras 21-24, 26, operative part)