

immovable property — Provisions of national legislation that for transactions between connected persons the taxable amount for the purposes of VAT is the open market value of the transaction — Methods of determining open market values — Exclusion of the right to deduct VAT where the calculation of tax is unlawful

Operative part of the judgment

1. Article 80(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the conditions of application it sets out are exhaustive and, consequently, that national legislation cannot on the basis of that provision provide that the taxable amount is to be the open market value of the transaction in cases other than those listed in that provision, in particular where the taxable person has a full right of deduction of value added tax, which is for the national court to ascertain.
2. In circumstances such as those of the main proceedings, Article 80(1) of Directive 2006/112 confers on the companies concerned the right to rely on it directly to oppose the application of provisions of national legislation that are incompatible with that provision. If it is not possible to interpret the national legislation in conformity with Article 80(1) of the directive, the national court should disapply any provision of that legislation that is contrary to it.

⁽¹⁾ OJ C 72, 5.3.2011 OJ C 145, 14.5.2011

Judgment of the Court (Third Chamber) of 3 May 2012 — Kingdom of Spain v European Commission

(Case C-24/11 P) ⁽¹⁾

(Appeal — EAGGF — ‘Guarantee’ section — Expenditure excluded from Community financing — Expenditure incurred by the Kingdom of Spain — Aid for the production of olive oil)

(2012/C 174/16)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: M. Muñoz Pérez, Agent)

Other party to the proceedings: European Commission (represented by: F. Jimeno Fernández, Agent)

Re:

Appeal to have set aside the judgment of the General Court of the European Union of 12 November 2010 in Case T-113/08

Spain v Commission, by which the General Court dismissed its action seeking partial annulment of Commission Decision 2008/68/EC of 20 December 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2008 L 18, p. 12), inasmuch as it relates to certain expenditure incurred by the Kingdom of Spain in the olive oil and arable crop sectors.

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 12 November 2010 in Case T-113/08 *Spain v Commission* in so far as, by holding that the Commission's letter AGR 16844 of 11 July 2002 was a communication within the terms of Article 8(1) of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section, as amended by Commission Regulation (EC) No 2245/1999 of 22 October 1999, the General Court found that the date of notification of that letter was the reference point for the start of the 24-month period laid down in the fifth point of Article 5(2)(c) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy, as amended by Council Regulation (EC) No 1287/95 of 22 May 1995, and the fifth subparagraph of Article 7(4) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy, for the purposes of the financial correction applied in Commission Decision 2008/68/EC of 20 December 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in the olive oil sector by reason of the fact that the proposals of the olive oil agency following the checks carried out at the mills had been inadequately monitored by the Spanish authorities;
2. Annuls Decision 2008/68 in so far as it excludes from Community financing the expenditure incurred by the Kingdom of Spain in the olive oil sector outside the 24-month period which preceded the date of notification of the Commission's letter of 24 November 2004, arranging the bilateral meeting of 21 December 2004, inasmuch as that expenditure is affected by the correction applied by reason of the fact that the proposals of the olive oil agency following the checks carried out at the mills were inadequately monitored by the Spanish authorities;
3. Orders the Kingdom of Spain and the European Commission to bear their own respective costs incurred both at first instance and in the present appeal.

⁽¹⁾ OJ C 95, 26.3.2011.