



Reports of Cases

Case C-183/13

Fazenda Pública
v
Banco Mais SA

(Request for a preliminary ruling from the Supremo Tribunal Administrativo)

(Taxation — VAT — Directive 77/388/EEC — Article 17(5), third subparagraph, point (c) — Article 19 — Deduction of input tax — Leasing transactions — Mixed use goods and services — Rule for determining the amount of the VAT deduction — Derogation — Conditions)

Summary — Judgment of the Court (Fourth Chamber), 10 July 2014

Harmonisation of fiscal legislation — Common system of value added tax — Deduction of input tax — Goods and services used both for transactions in respect of which VAT is deductible and for transactions in respect of which it is not deductible — Leasing transactions — Proportional deduction — Calculation — Formula other than the turnover-based method — Lawfulness — Condition

(Council Directive 77/388, Art. 17(5), third para., (c))

Point (c) of the third subparagraph of Article 17(5) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes must be interpreted as not precluding a Member State from requiring a bank, which, inter alia, carries out leasing activities, to include in the numerator and denominator of the fraction used to determine a single deductible proportion for all of its mixed use goods and services just the part of the rental payments made by customers as part of their leasing agreements that corresponds to interest, where that use of the goods and services is primarily caused by the financing and management of those contracts.

It is true that, in the exercise of the option, provided for under point (c) of the third subparagraph of Article 17(5) of the Sixth Directive, to derogate from the calculation rule provided for under the directive, all Member States must comply with the purpose and general system of that directive, and the principles on which the common system of VAT is based.

However, having regard to, first, the purpose of point (c) of the third subparagraph of Article 17(5) of the Sixth Directive, secondly, the context of which that provision forms part, thirdly, the principles of fiscal neutrality and proportionality and, fourthly, the purpose of the third subparagraph of Article 17(5) of that directive, any Member State that exercises the option provided for under point (c) of the third subparagraph of Article 17(5) of the Sixth Directive must ensure that the method for calculating the right to deduct makes it possible to ascertain with the greatest possible precision the portion of VAT relating to transactions in respect of which VAT is deductible.

The principle of neutrality, which forms an integral part of the common system of VAT, requires that the method by which the deduction is calculated objectively reflects the actual share of the expenditure resulting from the acquisition of mixed use goods and services that may be attributed to transactions in respect of which VAT is deductible.

To that end, the Sixth Directive does not preclude Member States from using, for a given transaction, a method or formula other than the turnover-based method, provided that the method used guarantees a more precise determination of the deductible proportion of the input VAT than that arising from application of the turnover-based method.

(see paras 27, 30-32, 35, operative part)