

which was received at the Court Registry on 22 May 2003, for a preliminary ruling in the case of University of Huddersfield and Commissioners of Customs and Excise on the following questions:

Where:

1. a university waives its right to exemptions from VAT in respect of any supplies of certain real property owned by it and leases the property to a trust set up and controlled by the university
2. the trust waives its right to exemption from VAT in respect of any supplies of the real property in question and grants to the university an underlease of the property
3. the lease and underlease were entered into and carried out by the University with the sole intention of obtaining a fiscal advantage and had no independent business purpose
4. the lease and leaseback amounted to, and was intended by the University and the trust to be, a deferral scheme (that is, a scheme for the deferral of payment of VAT) with a built-in feature that allowed an absolute tax saving at a later date
  - (a) are the lease and the underlease taxable supplies for the purposes of the Sixth VAT Directive<sup>(1)</sup>?
  - (b) Do they qualify as economic activities within the meaning of the second sentence of Article 4(2) of the Sixth VAT Directive?

<sup>(1)</sup> Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment OJ L 145, 13.06.1977, p. 1-40.

**Appeal brought on 23 May 2003 (fax of 22 May) by José Martí Peix SA against the judgment delivered on 13 March 2003 (not yet published in the ECR) by the Third Chamber of the Court of First Instance of the European Communities in Case T-125/01 between José Martí Peix SA and the Commission of the European Communities**

(Case C-226/03 P)

(2003/C 213/16)

An appeal against the judgment delivered on 13 March 2003 by the Third Chamber of the Court of First Instance of the

European Communities in Case T-125/01 between José Martí Peix SA and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 23 May 2003 (fax of 22 May) by José Martí Peix SA, represented by R. García-Gallardo and D. Domínguez Pérez, lawyers.

The applicant claims that the Court should:

1. declare the appeal admissible;
2. set aside the judgment of the Third Chamber of the Court of First Instance of 13 March 2003 in Case T-125/01 José Martí Peix SA v Commission of the European Communities;
3. order the Commission to pay the entirety of the costs incurred in the proceedings before the Court of Justice as well as those incurred in the proceedings before the Court of First Instance.

*Pleas and main arguments*

The Court of First Instance incorrectly interpreted the expression 'continuous irregularity' referred to in Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1). As a result of the broad construction given by the Court of First Instance to that expression, the principle of prescription is rendered devoid of practical effect and the interpretation is incompatible with the substance of that principle, which is to penalise an authority's failure to take any action in respect of an irregularity. The point of prescription is to safeguard the principle of legal certainty and to guarantee the principle of sound administrative practice. The principle of Community solidarity must be interpreted correctly and cannot be used in order to render the principle of prescription inapplicable.

The consequences of that incorrect interpretation are serious, inasmuch as Regulation No 2988/95 is a regulation of general application where expenditure is financed from the Community budget. The Court of First Instance's interpretation of the Regulation must therefore be followed at national level by the various authorities involved, in spite of the fact that it entails restriction of the protection enjoyed by every citizen vis-à-vis public authorities.