

2. Must Articles 43, 48 and 49 of the EC Treaty be interpreted as precluding national rules such as those laid down in Legislative Decree No 241 of 9 July 1997, as amended by Legislative Decree No 490 of 28 December 1998, read together with the consolidated law on income tax (Decree of the President of the Republic No 917 of 22 December 1986) and Law No 413 of 30 December 1991, which exclusively reserves the right to provide certain types of tax advice to a single category of operators, namely the Centri di Assistenza Fiscale (or CAFs), and denies other economic operators in the sector who are nevertheless professionally qualified to provide tax and accounting advice (doctors, commercial accountants, lawyers and work consultants) the opportunity of providing, on the same terms and conditions, the type of advice reserved to the CAFs?
3. Must Article 87 of the EC Treaty be interpreted as meaning that a measure such as that arising from the rules laid down in Legislative Decree No 241 of 9 July 1997, and in particular Article 38 thereof, which provides for payment to be made to CAFs from State funds in respect of the activities referred to in Articles 34(4) and 37(2) of that legislative decree, constitute State aid?

common system of value added tax: uniform basis of assessment, in particular Articles 2, 4, and 9, the Thirteenth Council Directive (86/560/EEC) (2) of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes — arrangements for the refund of value added tax to taxable persons not established in Community territory, in particular Articles 1 and 2, and the general principles of Community law:

1. How is the expression 'fixed establishment' in Article 9 of the Sixth Directive to be interpreted?
2. What are the factors to be considered in determining whether the supply of slot gaming services is from the business establishment of a company such as CI or from any fixed establishments that a company such as CI might possess?
3. In particular:

a) Where the business of a company ('A') is structured in circumstances such as those of the present case so that a connected company ('B'), whose business establishment lies outside the territory of the Community, supplies slot gaming services and the sole purpose of the structure is to eliminate A's liability to pay VAT in the State in which it is established:

- (i) can the slot gaming services be regarded as supplied from a fixed establishment in that Member State; and, if so,
- (ii) are the slot gaming services to be deemed to be supplied from the fixed establishment or are they deemed to be supplied from the place where B has established its business?

b) Where the business of a company ('A') is structured so that, for the purposes of the place of supply rules, a connected company ('B'), in circumstances such as those of the present case, purports to supply slot gaming services from a business establishment outside the territory of the Community and has no fixed establishment, from which those services are provided, in the Member State in which A is established and the sole purpose of the structure is to eliminate A's liability to pay VAT in that State on those services:

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Chancery Division, by order of that court dated 17 October 2003, in the case of 1) RAL (Channel Islands) Ltd, 2) RAL Ltd, 3) RAL Services Ltd, 4) RAL Machines Ltd against Commissioners of Customs and Excise

(Case C-452/03)

(2004/C 7/34)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Chancery Division, dated 17 October 2003, which was received at the Court Registry on 27 October 2003, for a preliminary ruling in the case of 1) RAL (Channel Islands) Ltd, 2) RAL Ltd, 3) RAL Services Ltd, 4) RAL Machines Ltd and Commissioners of Customs and Excise on the following questions:

- (1) In the circumstances of the present case and
- (2) having regard to the Sixth Council Directive (77/388/EEC) (1) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes —

- (i) do the transactions between B and connected companies within the Member State ('A', 'C' and 'D') qualify for VAT purposes as supplies made by or to those companies in the course of their economic activities; if not,
- (ii) what factors should be considered in determining the identity of the supplier of the slot gaming services?
4. a) Is there a principle of abuse of right which (independently of the interpretation given to the VAT Directives) is capable of precluding the advantage sought in a case such as the present?
- b) If so, how does it operate in the circumstances such as the present?
5. a) What significance, if any, should be attached to the fact that A, C and D are not subsidiaries of B and that B does not control A, C and D either legally or economically?
- b) Would it make a difference to any of the answers given above if the type of management undertaken by B at its business establishment outside the territory of the Community were necessary for the provision of slot gaming services to customers and neither A, C nor D performs those activities?

⁽¹⁾ OJ L 145, 13.06.77, p. 1.

⁽²⁾ OJ L 326, 21.11.1986, p. 40.

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court), by order of that court dated 23 October 2003, in the case of The Queen on the application of 1) ABNA Ltd, 2) Denis Brinicombe (a partnership), 3) BOCM Pauls Ltd, 4) Devenish Nutrition Ltd, 5) Nutrition Services (International) Ltd, 6) Primary Diets Ltd against 1) Secretary of State for Health, 2) Food Standards Agency

(Case C-453/03)

(2004/C 7/35)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Queen's Bench Division (Adminis-

trative Court) dated 23 October 2003, which was received at the Court Registry on 27 October 2003, for a preliminary ruling in the case of The Queen on the application of 1) ABNA Ltd, 2) Denis Brinicombe (a partnership), 3) BOCM Pauls Ltd, 4) Devenish Nutrition Ltd, 5) Nutrition Services (International) Ltd, 6) Primary Diets Ltd and 1) Secretary of State for Health, 2) Food Standards Agency on the following question:

Are Article 1(1)(b) of Directive 2002/02 ⁽¹⁾ and/or Article 1(4) of Directive 2002/02, to the extent that it amends Article 5c(2)(a) of Directive 79/373 ⁽²⁾ by requiring percentages to be listed, invalid by reason of

- a. the absence of a legal basis in Article 152(4)(b) EC;
- b. infringement of the fundamental right to property;
- c. infringement of the principle of proportionality?

⁽¹⁾ Directive 2002/02/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC (OJ L 63, 06.03.2002, p. 23).

⁽²⁾ Directive 79/373/EEC of the Council of 2 April 1979 on the marketing of compound feedingstuffs (OJ L 86, 06.04.1979, p. 30).

Action brought on 27 October 2003 by the Commission of the European Communities against the Italian Republic

(Case C-456/03)

(2004/C 7/36)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 27 October 2003 by the Commission of the European Communities, represented by Karen Banks, acting as Agent.

The applicant claims that the Court should:

- declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 1998/44/EC ⁽¹⁾ of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, the Italian Republic has failed to fulfil its obligations under Article 15 of that directive;