

**Judgment of the Court (Third Chamber) of 23 April 2009
(Reference for a preliminary ruling from the
Verwaltungsgerichtshof, Austria) — Sandra Puffer v
Unabhängiger Finanzsenat, Außenstelle Linz**

(Case C-460/07) ⁽¹⁾

(Sixth VAT Directive — Article 17(2) and (6) — Right to deduct input tax — Construction costs of a building allocated to a taxable person's business — Article 6(2) — Private use of part of the building — Financial advantage compared to non-taxable persons — Equal treatment — State aid under Article 87 EC — Exclusion from right to deduct)

(2009/C 141/20)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Sandra Puffer

Defendant: Unabhängiger Finanzsenat, Außenstelle Linz

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Article 87 EC and of Article 17(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Deduction of the input value added tax paid in respect of the construction of a building used principally for private residential purposes and, as to the remainder, intended to be rented out subject to tax — National legislation treating private use as an exempt transaction and, in the version applicable on the date of entry into force of the Sixth Directive, excluding the right to deduct input value added tax attributable to those parts of the building used for the taxable person's private purposes — Validity of Directive 77/388/EEC and, in particular, Article 17 thereof, in so far as it establishes a tax advantage upon the acquisition of a residential property for taxable persons who use their property, even minimally, for business purposes, compared to other taxable persons and nationals of other Member States.

Operative part of the judgment

1. Article 17(2)(a) and Article 6(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment do not infringe the general principle of equal treatment under Community law by conferring on taxable persons, by means of a full and

immediate right to deduct input value added tax on the construction of a mixed-use building and the subsequent staggered imposition of that tax on the private use of the building, a financial advantage compared to non-taxable persons and to taxable persons who use their property only as a private residence.

2. Article 87(1) EC must be interpreted as not precluding a national measure which transposes Article 17(2)(a) of Sixth Directive 77/388 and which provides that the right to deduct input value added tax payable is confined to taxable persons carrying out taxable transactions, to the exclusion of those carrying out only exempt transactions, in so far as that national measure may confer a financial advantage only on taxable persons carrying out taxable transactions.
3. Article 17(6) of Sixth Directive 77/388 must be interpreted as meaning that the derogation it contains does not apply to a provision of national law which amends legislation existing when that directive entered into force, which is based on an approach which differs from that of the previous legislation and which laid down new procedures. In that regard, it is irrelevant whether the national legislature amended the previous national legislation on the basis of a correct or incorrect interpretation of Community law. The question whether such an amendment of a provision of national law also affects, with regard to the applicability of the second subparagraph of Article 17(6) of the Sixth Directive, another provision of national law depends on whether those provisions of national law are interdependent or autonomous, which is a matter for the national court to determine.

⁽¹⁾ OJ C 315, 22.12.2007.

**Judgment of the Court (First Chamber) of 23 April 2009
(reference for a preliminary ruling from the Tribunale di
Bergamo (Italy)) — Luigi Scarpelli v NEOS Banca SpA**

(Case C-509/07) ⁽¹⁾

(Directive 87/102/EEC — Consumer protection — Consumer credit — Breach of contract of sale)

(2009/C 141/21)

Language of the case: Italian

Referring court

Tribunale di Bergamo

Parties to the main proceedings

Applicant: Luigi Scarpelli

Defendant: NEOS Banca SpA