

scope of application of the initial regulation to walker-rollators consisting of an aluminium frame on four wheels, two of which are front swivel wheels, handles and brakes, and designed to assist persons who have difficulties in walking and, secondly, it classifies those walker-rollators under subheading 8716 80 00 of the Combined Nomenclature.

(¹) OJ C 267, 7.11.2009.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Court of Session (Scotland), Edinburgh — United Kingdom) — The Commissioners for Her Majesty's Revenue and Customs v RBS Deutschland Holdings GmbH

(Case C-277/09) (¹)

(Sixth VAT Directive — Right to deduction — Purchase of vehicles and use for leasing transactions — Differences between the tax regimes of two Member States — Prohibition of abusive practices)

(2011/C 63/10)

Language of the case: English

Referring court

Court of Session (Scotland), Edinburgh

Parties to the main proceedings

Applicant: The Commissioners for Her Majesty's Revenue and Customs

Defendant: RBS Deutschland Holdings GmbH

Re:

Reference for a preliminary ruling — Court of Session (Scotland), Edinburgh — Interpretation of Article 17(3)(a) of Directive 77/388/EEC: Sixth Council Directive 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) — Transactions carried out with the sole aim of obtaining a tax advantage — Provision of vehicle leasing services in the United Kingdom by the German subsidiary of a bank established in the United Kingdom

Operative part of the judgment

1. In circumstances such as those of the main proceedings, Article 17(3)(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 must be interpreted as meaning that a Member State cannot refuse to allow a taxable person to deduct input value added tax paid on the acquisition of goods in that Member State, where those goods have been used for the purposes of leasing transactions carried out in another Member State, solely on the ground that the output transactions have not given rise to the payment of value added tax in the second Member State.

2. The principle of prohibiting abusive practices does not preclude the right to deduct value added tax, recognised in Article 17(3)(a) of Directive 77/388, in circumstances such as those of the main proceedings, in which a company established in one Member State elects to have its subsidiary, established in another Member State, carry out transactions for the leasing of goods to a third company established in the first Member State, in order to avoid a situation in which value added tax is payable on the sums paid as consideration for those transactions, the transactions having been categorised in the first Member State as supplies of rental services carried out in the second Member State, and in that second Member State as supplies of goods carried out in the first Member State.

(¹) OJ C 267, 7.11.2009.

Judgment of the Court (First Chamber) of 22 December 2010 — European Commission v Italian Republic

(Case C-304/09) (¹)

(Failure of a Member State to fulfil obligations — State aid — Aid for newly listed companies — Recovery)

(2011/C 63/11)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: L. Flynn, E. Righini and V. Di Bucci, Agents)

Defendant: Italian Republic (represented by: G. Palmieri, Agent, assisted by P. Gentili, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Failure to take, within the period prescribed, the measures necessary to comply with Articles 2, 3 and 4 of Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies (notified under document No C(2005) 591) (OJ 2006 L 94, p. 42).

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, within the time-limits laid down, all the measures necessary to abolish the aid scheme which was declared unlawful and incompatible with the common market by Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies and to recover from the beneficiaries the aid granted under that scheme, the Italian Republic has failed to fulfil its obligations under Articles 2 and 3 of that decision.