

3. Must it be concluded that the Protocols on Bananas annexed to the Lomé Conventions precluded increases of a tax such as the Italian consumption tax on bananas originating in Somalia after 1 April 1976 regardless of the specific effect of such increases on the export of such bananas?

Reference for a preliminary ruling from Court of Appeal (United Kingdom) made on 13 March 2009 — The Commissioners for Her Majesty's Revenue & Customs v Weald Leasing Limited

(Case C-103/09)

(2009/C 129/13)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

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

Defendant: Weald Leasing Limited

Questions referred

- In circumstances such as those that exist in the present case, where a largely exempt trader adopts an asset leasing structure involving an intermediate third party, instead of purchasing assets outright, does the asset leasing structure or any part of it give rise to a tax advantage which is contrary to the purpose of the Sixth Directive⁽¹⁾ within the meaning of paragraph 74 of the Judgment in Case C-255/02 *Halifax plc, Leeds Permanent Development Services Ltd, County Wide Property Investments Ltd v. CCE ('Halifax')*?
- Having regard to the fact that the Sixth VAT Directive contemplates the leasing of assets by exempt or partly exempt traders, and having regard to the Court's reference to 'normal commercial operations' in paragraphs 69 and 80 of the Judgment in *Halifax* and 27 of Case C-162/07 *Ampliscientifica* and also to the absence of any such reference in the Judgment in Case C-425/06 *Part Service*, is it an abusive practice for an exempt, or partly exempt, trader to do so even though in the context of its normal commercial operations it does not engage in leasing transactions?
- If the answer to question 2 is yes:
 - what is the relevance of 'normal commercial operations' in the context of paragraphs 74 and 75 of the Judgment

in *Halifax*: is it relevant to paragraph 74 or to paragraph 75 or to both;

- is the reference to 'normal commercial operations' a reference to:

- operations in which the taxpayer in question typically engages;

- operations in which two or more parties engage at arm's length;

- operations which are commercially viable;

- operations which create the commercial burdens and risks typically associated with related commercial benefits;

- operations that are not artificial in that they have commercial substance;

- any other type or category of operations?

- If the asset leasing structure or any part of it is found to constitute an abusive practice, what is the appropriate redefinition? In particular, should the national court or the tax collecting authority:
 - ignore the existence of the intermediate third party and direct that VAT be paid on an open market value of the rentals;

- ignore the existence of the intermediate third party and direct that VAT be paid on an open market value of the rentals;

- redefine the leasing structure as an outright purchase; or

- redefine the transactions in any other way which either the court or the tax collecting authority considers to be an appropriate means by which to re-establish the situation that would have prevailed in the absence of the transactions constituting the abusive practice?

⁽¹⁾ 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, p. 1

Reference for a preliminary ruling from the Conseil d'Etat (Belgium) lodged on 20 March 2009 — Terre wallonne v Région wallonne

(Case C-105/09)

(2009/C 129/14)

Language of the case: French

Referring court

Conseil d'Etat