



## ***ECJ jurisprudence in the field of indirect taxation: the main criteria***

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# *Overview*

- Value Added Tax
- Car taxation
- Excise duties



## ***Value Added Tax***

- In order for a “supply for consideration” to exist for VAT purposes, a “direct link” must exist between the supply and the amount received.

Case 154/80, *Cooperatieve*, judgment of 5 February 1981.

Case 102/1986, *Apple and Pear*, judgment of 8 March 1988.

Case 16/93, *Tolsma*, judgment of 3 March 1994.



## ***Value Added Tax***

- Taxable person:
  - Holding companies: case C-60/90, Polysar, judgment of 20 June 1991.
  - Professionals acting independently in the exercise of public functions: case C-202/90, Recaudadores, judgment of 25 July 1991.
  - Public bodies: Case C-446/98, Fazenda publica, judgment of 14 December 2001.



## ***Value Added Tax***

- Taxable amount.
  - Undervalued supplies: Case C-412/03, Hotel Scandic, judgment of 20 January 2005.
  - Subjective value: Case 324/1982, Commission vs Belgium, judgment of 10 April 1984.



## ***Value Added Tax***

- Deductions.
  - Preparatory activities: case C-110/94, Inzo, judgment of 29 February 1996.
  - Restrictions to the right to deduct: case C305/97, Royscott, judgment of 5 October 1999.
  - Capital assets for mixed purposes: case C-434/03, Charles, judgment of 14 July 2005.
  - Recovery 8th Directive: Commission vs Luxembourg, judgment of 19 January 2006.



## ***Value added Tax***

- Carousal fraud: economic activity + possibility of joint and several liability.
  - Case C-354/03, Optigen, judgment of 12 January 2006.



## ***Value Added Tax***

Abuse of rights: prohibition of abusive practices in the field of VAT.

- Case C-255/02, Halifax.





## ***Value Added Tax***

- Measures of collection: competence of Member States with due respect to the principle of proportionality.
  - Case C-286/94, Garage Molenheide, judgment of 18 December 1997.



## ***Car taxation***

- Member States may levy a registration tax, provided there is no discrimination precluded under Article 90 EC.
  - Case C-345/93, Nunes Tadeu, judgment of 9 March 1995.



## *Car taxation*

- The criteria in order to assess whether Article 90 EC is infringed.
  - Case C-375/95, Commission vs Greece, judgment of 23 October 1997.
  - Case C-101/00, Siilin, judgment of 19 September 2002.



## ***Car taxation***

The rates of the tax may be fixed by Member States at the level they see fit, provided no discrimination occurs.

- Case C-383/01, *De Danske Bilimportører*, judgment of 17 June 2003).



## ***Car taxation***

Cases of transfer of residence: non application of Directive 83/183/EEC.

- Case C-365/02, Lindfors, judgment of 15 July 2004.



## *Car taxation*

- Transfrontier workers: respect of Article 39 EC
  - Case C-464/02, Commission vs Denmark, judgment of 15 September 2005.



## ***Excise duties***

- Compatibility of a national levy with both VAT and the harmonized rules on excise duties.
  - Case C-437/97, *Evangelischer*, judgment of 9 March 2000.



## ***Excise duties***

- Rates applied to tobacco products.
  - Case C-302/00, Commission vs France, judgment of 27 February 2002.