

Judgment of the Court (Eighth Chamber) of 16 July 2009 – Commission v Italy

(Case C-244/08)

Failure of Member State to fulfil obligations – Sixth VAT Directive – Article 17 – Eighth Directive 79/1072/EEC – Article 1 – Thirteenth Directive 86/560/EEC – Article 1 – Refund or deduction of VAT – Taxable person established in another Member State or in a non-Member State, but having a fixed establishment in the Member State concerned

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Refund of the tax to taxable persons not established in the territory of the country or in Community territory (Council Directives 79/1072, Art. 1, and 86/560, Art. 1) (see paras 33-39, operative part)

Re:

Failure of a Member State to fulfil obligations – Infringement of Article 1 of Eighth Council Directive 79/1072/EEC of 6 December 1979 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 the territory of the country (OJ 1979 L 331, p. 11) and Article 1 of Thirteenth Council Directive 86/560/EEC 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 – Refund of VAT to a taxable person established in another Member State or in a non-member country but having a fixed establishment in Italy.

Operative part

The Court:

1.

Declares that the Italian Republic has failed, in relation to the refund of value added tax to a taxable person residing in another Member State or in a non-Member State, but having a fixed establishment in the Member State concerned, to fulfil its obligations under Article 1 of the Eighth Council Directive 79/1072/EEC of 6 December 1979 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 the territory of the country, and Article 1 of the Thirteenth Council Directive 86/560/EEC 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, by requiring a taxable person established in another Member State or in a non-member State, but having a fixed establishment in Italy and who, during the period at issue, supplied goods and services in Italy, to apply for a refund of input value added tax according to the mechanism provided by those directives rather than deduct it when the purchase in respect of which repayment of that tax is sought is made not through that

fixed establishment, but directly by the principal establishment of that taxable person;

2.

Orders the Italian Republic to pay the costs.