

Judgment of the Court (Fifth Chamber) of 11 December 2008 – Commission v Italy

(Case C-174/07)

Failure of a Member State to fulfil obligations – Article 10 EC – Directive 2006/112/EC – Sixth VAT Directive – Obligations under domestic rules – Monitoring of taxable transactions – Amnesty

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Obligations of persons liable for the tax (Art. 10 EC; Council Directives 77/388, Arts 2 and 22, and 2006/112, Arts 2(1)(a), (c) and (d), and 193 to 273) (see paras 34-37, operative part)

Re:

Failure of a Member State to fulfil obligations – Infringement of Articles 2 and 22 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), replaced, as from 1 January 2007, by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) – Obligations under domestic rules – National law which discontinues the monitoring of taxable transactions carried out during a series of tax periods.

Operative part

The Court:

1.

Declares that, by extending, by Article 2(44) of Law No 350 of 24 December 2003 relating to the provisions for drawing up the annual and pluriannual budget of the State (Finance Law for 2004) (legge n. 350, disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2004)), to 2002 the tax amnesty provided for in Articles 8 and 9 of Law No 289 of 27 December 2002 relating to the provisions for drawing up the annual and pluriannual budget of the State (Finance Law for 2003) (legge n. 289, disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2003)), and consequently providing generally and indiscriminately that the assessment of taxable transactions effected in the 2002 tax period is to be discontinued, the Italian Republic has failed to fulfil its obligations under Article 2(1)(a), (c) and (d) and Articles 193 to 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, which as from 1 January 2007 replaced Articles 2 and 22 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, and under Article 10 EC;

2.

Orders the Italian Republic to pay the costs.