

**Judgment of the Court (Third Chamber) of 22 December 2010 – Commission v Austria**

**(Case C-433/09)**

Failure of a Member State to fulfil obligations – Taxation – Directive 2006/112/EC – VAT – Taxable amount – Tax on the delivery of vehicles not yet registered in the Member State based on their value and their average consumption – ‘Normverbrauchsabgabe’

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Taxable amount (Council Directive 2006/112, Art. 78) (see paras 33-35, 38-39, 43, 46)

**Re:**

Failure of Member State to fulfil obligations – Infringement of Articles 78 and 79 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) – Sale of a motor vehicle – Inclusion in the taxable amount of a tax on the delivery of vehicles not yet registered in the Member State concerned on the basis of their value and their average consumption (‘Normverbrauchsabgabe’).

**Operative part**

The Court:

1.

Declares that, by including the standard consumption tax (‘Normverbrauchsabgabe’) in the taxable amount of value added tax levied in Austria on the delivery of a motor vehicle, the Republic of Austria has failed to fulfil its obligations under Article 78 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;

2.

Dismisses the remainder of the action;

3.

Orders the Commission and the Republic of Austria to bear their own costs.