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IRAP is no VAT

The Italian regional tax IRAP is not caught by the prohibition in Art. 33 of the Sixth VAT Directive. Letter to the European Court of Justice of Jan 3, 2006.

1. The Advocate General JACOBS states:

   "24. It is common ground that, in order to be caught by the prohibition in Article 33 of the Sixth Directive, a national tax must display all of the essential features of VAT which, according to the Court's case-law, are four in number, corresponding closely to the definition in Article 2 of the First Directive:

   - it applies generally to supplies of goods or services;
   - it is proportional to the price of those goods or services, whatever the number of transactions carried out;
   - it is charged at each stage of the production and distribution process; and
   - it is imposed on the value added to the goods and/or services in question."

   "25. Possession of all four essential features of VAT is thus both a necessary and a sufficient condition for a tax to be prohibited under Article 33 of the Sixth Directive. However, it is equally undisputed that a tax does not escape the prohibition simply because it is not identical to VAT in all respects."

   …

   "59. In this regard, the referring court notes that 'the amount of IRAP collected in the various stages of the cycle, from production up to the final consumer, is equal to the rate of IRAP applied to the selling price of goods and services charged to the final consumer. Despite its fractional basis, therefore, IRAP in fact acts as a general and proportional tax on the price of transferring goods or services to the consumer.'"

2. With respect to the second feature (´proportional to the price of those goods or services´) the following has to be mentioned:

   IRAP is systematically not proportional to the (final sale) price of a good or service as it taxes only the value addition performed within Italy and does not tax value added contained in imported goods. The actual paid IRAP tax rate with respect to the final sale price varies systematically depending on the import portion, it increases with decreasing import portion and vice versa.

3. Example (simplified):

   Case A: Volkswagen ITALY imports from Germany a car for 20.000 € and sells it for 25.000 € plus VAT. The IRAP tax rate is 4,25% on the difference of 5.000 € (= 25.000 - 20.000), i.e. 212,50 € (at the most, if Volkswagen ITALY has only personnel and finance cost, not deductible under IRAP, less otherwise); with respect to the price of the car this yields a tax rate of 0,85 % (= 212,50 / 25.000) at the most.

   Case B: FIAT sells a car in Italy produced solely by FIAT in Italy for 25.000 € plus VAT (as in case A). The IRAP tax rate is 4,25% on 25.000 €, i.e. 1.062,50 € (at the most, if no parts or services are imported, less otherwise); with respect to the price of the car this yields a tax rate of 4,25 % (= 1.062,50 / 25.000) at the most.

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4. Result: The IRAP tax rate with respect to the (final sale) price of a good or service varies between 0% (if good or service is completely imported) and 4,25% (if good or service is produced completely in Italy). The second feature stated by the Advocate General is systematically not fulfilled, and therefore IRAP is not caught by the prohibition in Art. 33 of the Sixth Directive as all four features must be displayed.

5. This argument holds in addition to the arguments given in the CFE opinion statement.

Fur further information see:

IRAP (ECJ C-475/03): Must Article 33 of Directive 77/388/EEC (as amended by Directive 91/680/EEC) be interpreted as meaning that it prohibits a charge to IRAP of the net value of production deriving from the regular exercise of independent activity to produce or exchange goods or to provide services?
(http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-475/03&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100)

Opinion statement of Advocate General JACOBS of 17.3.2005
(http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-475/03&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100)

Opinion statement of CFE of 2005
(http://www.cfe-eutax.org/pdf_word_documents/opinion_statements/word/2005_08.doc)