

ECJ: Brokering bets not exempt from Value Added Tax pursuant to the of Sixth Council Directive 77/388/EEC

The European Court of Justice (ECJ) has recently held that commissions paid to a sports betting agent is not exempt from VAT (order of 14 May 2008, Joined Cases C-231/07 and C-232/07). The Brussels Court of Appeal (Cour d'appel Bruxelles) had asked the ECJ for clarification as to whether an exemption pursuant to Art. 13 part B letter d no. 3 of the Sixth Council Directive 77/388/EEC should be considered, according to which the supply of certain financial services relating to turnovers resulting from the transfer of bets are exempt from VAT. Interpreting this directive, the ECJ declined this. The Belgian initial proceedings concerned tobacconists ("buralistes") which accepted bets on behalf of a bookmaker and paid out the winnings to betting customers.

Operative part of the order:

"The terms ,transactions, including negotiation, concerning deposit accounts and payments' used in Article 13(B)(d)(3) 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 are to be interpreted as meaning that they do not refer to the supply of services by an agent acting on behalf of a client which carries out the activity of accepting bets on horse races and other sporting events, consisting of acceptance by the agent of bets on behalf of the client, registration thereof, confirmation to the client, by presentation of the betting slip, that a bet was made, collection of funds, payment of winnings, sole assumption of liability as regards the client for management of the funds

collected and for thefts and/or losses of money and receipt of remuneration in the form of commission from the client as remuneration for that activity."