

Case C-381/97

Belgocodex SA v Belgian State

(Reference for a preliminary ruling
from the Tribunal de Première Instance de Nivelles)

(First and Sixth VAT Directives — Letting and leasing of immovable property —
Right to opt for taxation)

Opinion of Advocate General Alber delivered on 17 September 1998 I - 8155

Judgment of the Court (Fifth Chamber), 3 December 1998 I - 8165

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Exemptions provided for by the Sixth Directive — Exemption of the leasing and letting of immovable property — Right of option available to taxpayers — National legislation revoking the right of option and reintroducing the exemption — Whether permissible (Council Directives 67/227, Art. 2, and 77/388, Art. 13B and C)*

2. *Community law — Principles — Protection of legitimate expectations — Legal certainty — Whether those principles were complied with in the context of the retroactive repeal of a law conferring a right of option on persons liable to pay value added tax — To be determined by the national courts*

1. Article 2 of the First Directive (67/227) on the harmonisation of legislation of Member States concerning turnover taxes does not preclude a Member State which has availed itself of the possibility provided for by Article 13C of the Sixth Directive (77/388) — and which has thus granted its taxpayers the right to opt for taxation of certain lettings of immovable property — from abolishing, by means of a subsequent law, that right of option and thus reintroducing the exemption.

Where a national legislature has granted taxpayers the right of option, it cannot be inferred from the principle of fiscal neutrality, which is laid down in Article 2 of the First Directive and which is inherent in the common system of value added tax, that its choice is irreversible. Since the implementation by the Sixth Directive of the harmonised system of exemptions, it is no longer possible to derogate from that system on the basis of a provision of the First Directive.

It is for the Member States, who have a wide discretion under Article 13B and C of the Sixth Directive, to assess whether or not they should introduce the right of option, depending on what they consider to be expedient in the situation existing in their country at a given time. The freedom to grant or decline to grant the right of option is not restricted in time; nor is it restricted by the fact that a contrary decision has been adopted in the past. Member States may therefore, within the sphere of their national powers, also revoke the right of option after having introduced it and return to the basic rule that the letting and the leasing of immovable property are exempt from tax.

2. Although the principle of protection of legitimate expectations and the principle of legal certainty form part of the Community legal order and must be observed by the Member States when they exercise the powers conferred on them by Community directives, it is not for the Court but for the national court to determine whether a breach of those principles has been committed by the retroactive repeal of a law which introduced a right of option in relation to the taxation of the leasing and the letting of immovable property, but in respect of which the implementing decree was never adopted.