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Indirect taxation EUCJ case law

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose.

Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Indirect taxation case-law

- *Court of Justice of European Union*
- *Infringement procedures*
- *VAT Cases*
- *Car taxation*
- *Excise duties*

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Indirect taxation case-law

815 judgments from 01-01-1970 until 01-09-2018.

The chronological list of cases is available on EUROPA:
http://ec.europa.eu/taxation_customs/common/infringements/case_law/index_en.htm

Judgments are available at:
http://curia.europa.eu

and at Eurlex:
http://eur-lex.europa.eu/en/index.htm

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The Court of Justice of the European Union

- *reviews the legality of the acts of the institutions of the European Union,*
- *ensures that the Member States comply with obligations under the Treaties: art 258 TFEU (infringement procedure),*
- *interprets European Union law at the request of the national courts and tribunals (preliminary questions).*

Infringement procedures

- *If the EU country concerned fails to communicate measures that fully transpose the provisions of directives, or doesn't rectify the suspected violation of EU law, the Commission may launch a formal infringement procedure. The procedure follows a number of steps laid out in the EU treaties, each ending with a formal decision.*

- *The Commission sends a letter of formal notice requesting further information to the country concerned, which must send a detailed reply within a specified period, usually 2 months.*

Infringement procedures

- *If the Commission concludes that the country is failing to fulfil its obligations under EU law, it may send a reasoned opinion: a formal request to comply with EU law. It explains why the Commission considers that the country is breaching EU law. It also requests that the country inform the Commission of the measures taken, within a specified period, usually 2 months.*

- *If the country still doesn't comply, the Commission may decide to refer the matter to the Court of Justice. Most cases are settled before being referred to the court. Commission enjoys a discretionary power in deciding whether or not to commence infringement proceedings or to refer a case to the Court*

Infringement procedures

- *If an EU country fails to communicate measures that implement the provisions of a directive in time, the Commission may ask the court to impose penalties.*

- *If the court finds that a country has breached EU law, the national authorities must take action to comply with the Court judgment.*

- ***Non-compliance with a court decision***
- *If, despite the court's judgment, the country still doesn't rectify the situation, the Commission may refer the country back to the court.*

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Infringement procedures

Financial penalties

When referring an EU country to the court for the second time, the Commission proposes that the court impose financial penalties, which can be either a lump sum and/or a daily payment.

These penalties are calculated taking into account:

- *the importance of the rules breached and the impact of the infringement on general and particular interests*
- *the period the EU law has not been applied*
- *the country's ability to pay, ensuring that the fines have a deterrent effect*

The amount proposed by the Commission can be changed by the court in its ruling.

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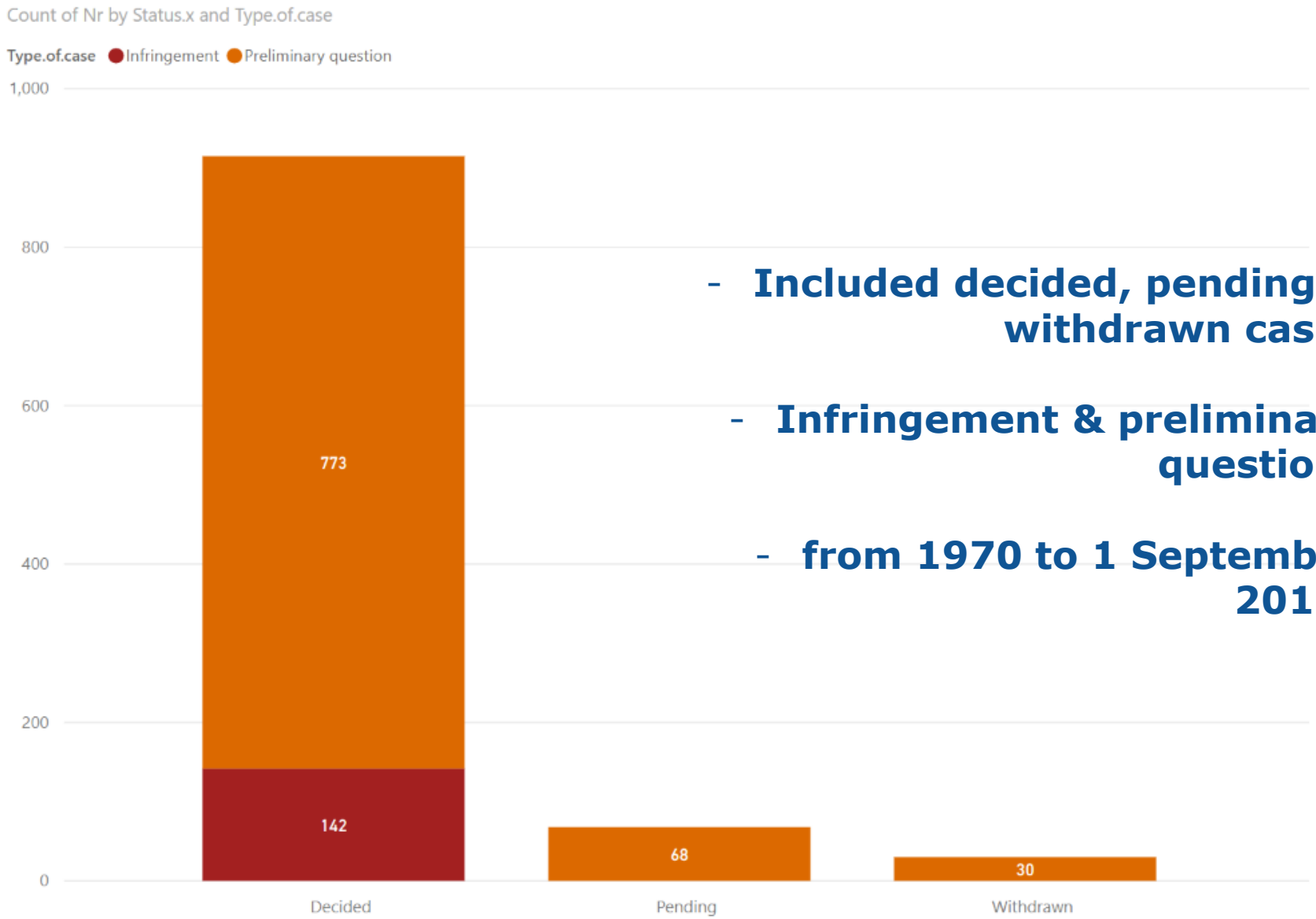
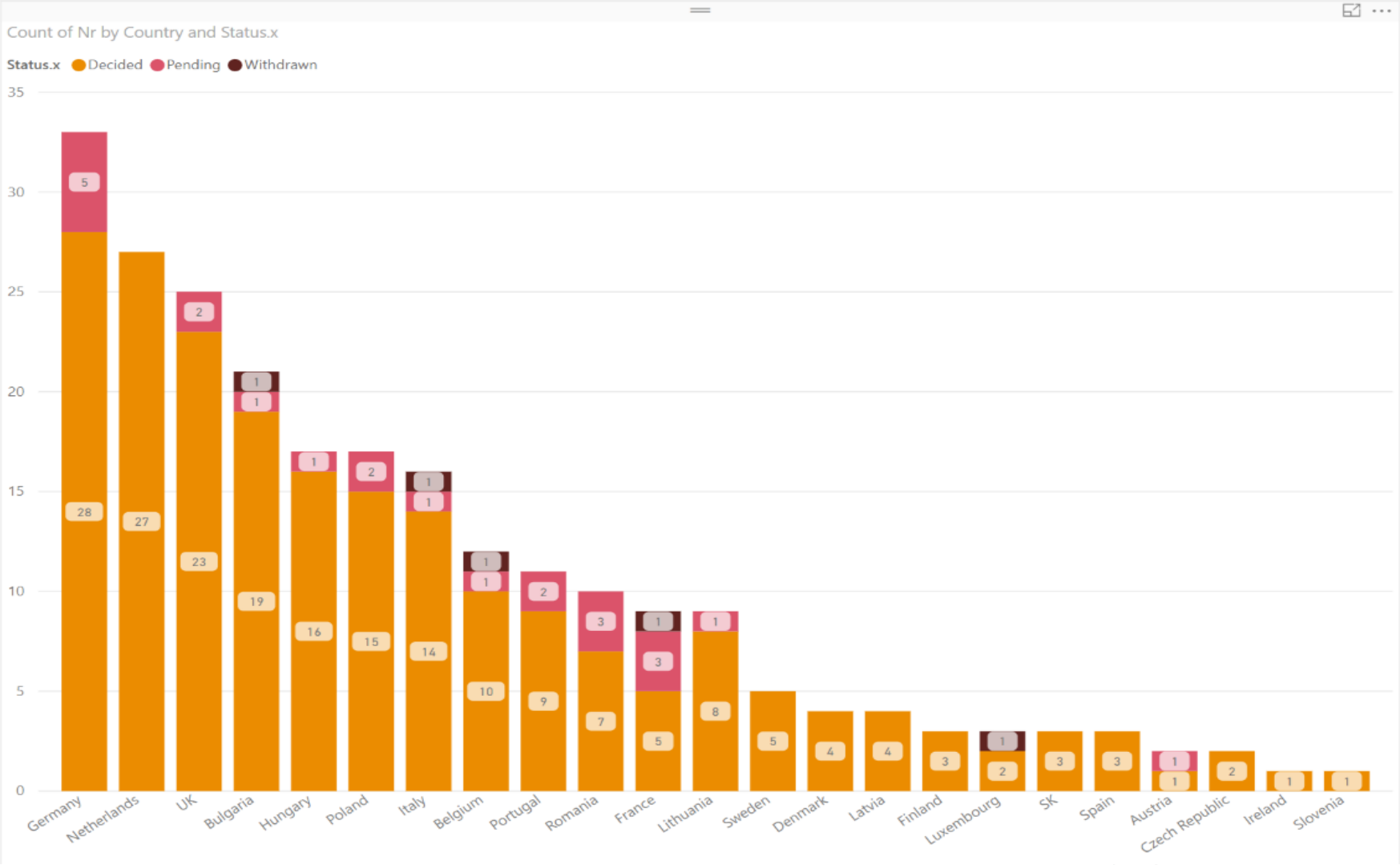
Overview of all VAT cases



- **Included decided, pending & withdrawn cases**
- **Infringement & preliminary question)**
- **from 1970 to 1 September 2018)**

Preliminary rulings



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A) Taxable event
a) taxable persons

Any person carrying out independently an economic activity, whatever the results or purposes of that activity.

- ***Case 268/83, Rompelman*** *(preparatory activities).*
- ***Case C-210/04, FCE Bank*** *(fixed establishment).*
- ***Case C-60/90, Polysar*** *(share holders).*
- ***Case C-32/03, Fini*** *(winding up of the economic activity).*
- ***Case C-62/12, Kostov*** *(non habitual activities).*
- ***Case C-219/12, Fuchs*** *(solar panels).*

Public bodies as taxable persons

1 *not when engaging in activities as public authorities:*

C-231/87 commune di Carpaneto Piacentino

C-4/89 Ayutamiento de Sevilla (tax collectors)

C-182/17 - Ntp. Nagyszénás

2 *risk of significant distortion of competition*

C-430/04 Feueurbestattungsverein

C-288/07 Isle of Wight

C-344/15 - National Roads Authority

3 *always when carrying out certain activities (Annex I)*

C-520/14 – Borsele

C- 554/07 Commission/Ireland

Supply for consideration

A "direct link" must exist between the supply and the amount received.

Case 102/1986, Apple and Pear (annual charge imposed on apple and pears growers).

Case 16/93, Tolsma (street musician).

Case C-435/03, British American (stolen goods).

Case C-277/05, Société Thermale d'Eugenie les Bains (client deposit).

Case C-246/08, Comm vs Finland (public legal aid offices).

Illegal activities

- *Case c-343/89, Witzemann, 06-12-1990 (counterfeited money)*
- *Case C-3/97, Goodwin and Unstead, 28-05-1998 (counterfeited perfumes)*
- *Case C-158/98, Coffeeshop 'Siberie', 29-06-1999 (renting out a space for the sale of drug)*

Taxable amount

- *Consideration received, from the customer or from a third party.*
- *C-412/03, Hotel Scandic (Undervalued supplies).*
- *C-324/82, Commission/Belgium (subjective value).*
- *C-184/00, Office des produits wallons (subsidies linked to the price).*
- *C-281/91, Muys'en de Winter's Bouw (interests).*
- *C-98/05, C-228/09, C-433/09, C-106/10 (vehicle registration tax).*

Vat exemptions

- ***For certain activities in the public interest, Articles 132 to 134***
- ***For other activities, Article 135***

- *Exemptions are strictly limited to the ones referred to in the Directive: C-107/84 (German Post), C-203/87 (Italian earthquake).*
- *Exemptions are compulsory. However for some of them MS may allow taxable person a right to opt for taxation for certain transactions (Article 137)*
- *The terms used to specify those exemptions are to be interpreted strictly since they constitute exceptions to the general principle that VAT is levied on all economic activities.*

Medical exemption

- ***Case C-307/01, Peter d'Ambrumenil****: medical services consisting in providing care to persons by diagnosing and treating a disease or any other health disorder.*
- ***Case C-384/98, D and W****: genetic affinity of individuals through biological tests. exemption for medical care provided in the exercise of the medical and paramedical professions supply by a doctor approved as a court expert of an opinion in a paternity dispute).*
- ***Case C-91/12, Skatteverket v PCF Clinic AB****: cosmetic surgery exempt only where there is a therapeutic aim, and not for purely cosmetic purposes.*
- ***Case C-237/09, Belgian State v Nathalie De Fruytier****: transport of human organs and samples for hospitals not exempt.*
- ***Case C-262/08, CopyGene A/S v Skatteministeriet****: collection, transportation, analysis and storage of umbilical cord blood of newborn children for a future hypothetical health treatment not exempt.*

Other exemptions

C-526/13 - Fast Bunkering Klaipėda *fuelling and provisioning of vessels used for navigation on the high seas*

C-607/14 – Bookit *— Purchase of cinema tickets by telephone or via the Internet: payments and transfers*

C-699/15 - Brockenhurst College *Supply of restaurant and entertainment services by an educational establishment*

C-616/15 - Commission v Germany *Restriction to independent groups whose members exercise a limited number of professions*

C-90/16 - The English Bridge Union *Definition of 'sport' — Activity characterised by a physical element*

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Right of deduction

- *1. The right of deduction is an integral part of the VAT scheme and in principle may not be limited, except when evasion or fraud exists and the taxable person participated in the fraud or knew or should have known about it.*

- *2. The deduction system is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities.*

- *3. The right to deduct is exercisable immediately in respect of all the VAT charged on input transactions: Case C-110/94, Inzo (preparatory activities intention).*

Right of deduction

- ***C-126/14 Sveda*** *Use of the recreational path as a means of carrying out taxed transactions*

- ***C-516/14 - Barlis 06*** *Details required in invoices*

- ***C-132/16 - Iberdrola Inmobiliaria Real Estate Investments*** *Determination of the existence of a direct and immediate link with the economic activity of the taxable person*

- ***C-140/17 - Gmina Ryjewo*** *Initial allocation to an activity which does not confer entitlement to deduct input tax and subsequently also to an activity subject to VAT*

Abusive practices

Taxable persons are generally free to choose the organisational structures and the form of transactions which they consider to be most appropriate for their economic activities ***and for the purpose of limiting their tax burdens****.*

An abusive practice can be found to exist only if:

- the transactions concerned, notwithstanding formal application of the conditions laid down by the relevant provisions of the directive and the national legislation transposing it, result in the accrual of a tax advantage the grant of which would be contrary to the purpose of the relevant provisions of the directive and,
- it is apparent from a number of objective factors that the essential aim of the transactions concerned is to obtain that tax advantage.

Abusive practices

Case C-255/02, Halifax and Others
Case C-277/09, RBS Deutschland Holdings GmbH
Case C-103/09, Weald Leasing

Judgment of 5 June 1997, SDC / Skatteministeriet (C-2/95, ECR 1997 p. I-3017) E...

Bound House Systems (C-484/03)

Fulcrum Electronics (C-355/03)

Judgment of 12 January 2006, Optigen and others (C-354/03, C-355/03 and C-4...

Judgment of 10 March 2011, Bog and others (C-497/09, C-499/09, C-501/09 an...

Judgment of 21 February 2006, Halifax and others (C-255/02, ECR 2006 p. I-160...

Bungy Fun Germany (C-147/98)

Lohmeyer (C-501/09)

Judgment of 21 March 2000, Gabalfrisa and others (C-110/98 to C-147/98, ECR ...

Flebbe Filmtheater (C-499/09)

Prohibition of taxes assimilated to turnover taxes 401 TFUE

- *This provision prohibits Member States from introducing or maintaining taxes, duties or charges which can be characterized as turnover taxes.*

- *Taxes, duties and charges must in any event must be regarded as being imposed on the movement of goods and services in a way comparable to VAT if they exhibit the essential characteristics of VAT: Case C-200/90 Dansk Denkavit ApS (market contribution).*

- *The Court has identified 4 main characteristics of the VAT which are used to assess any kind of tax submitted to its examination: C-475/03 Banca di Cremona , 3/10/2006 (grand chamber judgment).*

Turnover taxes/VAT

- *Four characteristics of the VAT :*
  - it applies generally to transactions relating to goods or services;
  - it is proportional to the price charged by the taxable person in return for the goods and services which he has supplied;
  - it is charged at each stage of the production and distribution process, including that of retail sale, irrespective of the number of transactions which have previously taken place;
  - the amounts paid during the preceding stages of the process are deducted from the tax payable by a taxable person, with the result that the tax applies, at any given stage, only to the value added at that stage and the final burden of the tax rests ultimately on the consumer.

Car taxation

- ***SWD**: Principles of taxation of motor vehicles according to EU law as interpreted by the Court of Justice*

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/other_taxes/passenger_car/swd_2012_429_en.pdf

- ***Second hand cars***

  C-393/98 Gomez Valente article 110 TFEU.

- ***Leasing***

  C-451/99 Cura Anlagen

  C-242/05 G.M van de Coevering (short term leasing)

- ***Company cars***

  C-464/02 employees

  C-151/04 managers

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Car taxation

- ***Other taxes*** ***(seen in taxable amount slide)***
  C-98/05 C-228/09, C-433/09, C-106/10

C-640/17, Luís Manuel dos Santos *Second-hand motor vehicles imported into other Member States — Date of first registration in another Member State*

C-552/15, Commission v Ireland *Payment of the full amount of tax at the time of registration — Proportionality*

C-420/15, Criminal proceedings against U *Obligation to register a vehicle belonging to a person resident in Belgium and intended to be used in Italy*

Excise duties

- *other indirect taxes on excise goods:* ***C-437/97, C-82/12****.*
- *minimum price for tobacco:* ***C-302/00****.*
- *distance sales of excise goods:* ***C-5/05****.*
- *tax markings and theft of excise goods:* ***C-374/06****.*
- *minimum amount of excise duties on tobacco:* ***C-428/13****.*