3. Must the recipient, who acquired or held an item known to have been conveyed under cover of a TIR carnet, where it was not established that that item was submitted and declared before the customs office of destination, be considered to be, on account of those circumstances alone, a person who should have been aware that that item had been removed from customs supervision, and to be recognised as jointly and severally liable within the meaning of the third indent of Article 203(3), in conjunction with Article 213, of the Community Customs Code?

4. If the answer to the third question is in the affirmative, does the customs administration's failure to require payment of the customs debt from the recipient preclude the liability under Article 457(2) of the CCIP of the guaranteeing association, pursuant to Article 1(16) of the [TIR Convention]?

(1) Council Regulation (EEC) No 2112/78 of 25 July 1978 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva (OJ 1978 L 252, p. 1).
(2) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Reference for a preliminary ruling from Supreme Court (Ireland) made on 2 May 2016 – Edward Cussens, John Jennings, Vincent Kingston v T. G. Brosman

(Case C-251/16)

(2016/C 243/24)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicants: Edward Cussens, John Jennings, Vincent Kingston

Defendant: T. G. Brosman

Questions referred

1) Is the principle of abuse of rights, as recognised in the judgment of the Court in Halifax as being applicable in the sphere of VAT, directly effective against an individual in the absence of a national measure, whether legislative or judicial, giving effect to that principle, in circumstances where, as here, the redefining of the pre-sale transactions and the purchaser sales transactions (collectively referred to as the appellants' transactions), as advocated by the Commissioners, would give rise to a liability on the part of the appellants to VAT, where such liability, on the proper application of the provisions of national legislation in force at the relevant time to the appellants' transactions, did not arise?

2) If the answer to question 1) is that the principle of abuse of rights is directly effective against an individual, even in the absence of a national measure, whether legislative or judicial, giving effect to that principle, was the principle sufficiently clear and precise to be applied to the appellants' transactions, which were completed before the judgment of the Court in Halifax was delivered, and, in particular, having regard to the principles of legal certainty and the protection of the appellants' legitimate expectations?

3) If the principle of abuse of rights applies to the appellants' transactions so that they are to be redefined –

   a) what is the legal mechanism by means of which the VAT due on the appellants' transactions is assessed and is collected, since no VAT is due, assessable or collectable in accordance with national law, and

   b) how are the national courts to impose such liability?

4) In determining whether the essential aim of the appellants' transactions was to obtain a tax advantage, should the national court consider the pre-sale transactions (which it has been found were effected solely for tax reasons) in isolation, or must the aim of the appellants' transactions as a whole be considered?

5) Is s. 4(9) of the VAT Act to be treated as national legislation implementing the Sixth Directive ([1]), notwithstanding that it is incompatible with the legislative provision envisaged in Article 4(3) of the Sixth Directive, on the proper application of which the appellants, in relation to the supply before first occupation of the properties, would be treated as taxable persons, notwithstanding that there had been a previous disposal which was chargeable to tax?

6) If s. 4(9) is incompatible with the Sixth Directive, are the appellants, by relying on that sub-section, engaged in an abuse of rights contrary to the principles recognised in the judgment of the Court in Halifax?

7) In the alternative, if s. 4(9) is not incompatible with the Sixth Directive, have the appellants achieved a tax advantage which is contrary to the purpose of the Directive and/or s. 4?

8) Even if s. 4(9) is not to be treated as implementing the Sixth Directive, does the principle of abuse of rights as established by the judgment of the Court in Halifax nevertheless apply to the transactions in issue by reference to the criteria laid down by the Court in Halifax?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment
OJ L 145, p. 1

Appeal brought on 12 May 2016 by Schenker Ltd against the judgment of the General Court (Ninth Chamber) delivered on 29 February 2016 in Case T-265/12: Schenker Ltd v European Commission

(Case C-263/16 P)

(2016/C 243/25)

Language of the case: English

Parties

Appellant: Schenker Ltd (represented by: F. Montag, Rechtsanwalt, F. Hoseinian, avocat, M. Eisenbarth, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 29 February 2016 in case T-265/12 Schenker Ltd v European Commission;

— annul Article 1(1)(a) of the Commission decision of 28 March 2012 in Case COMP/39462 – Freight Forwarding (the Decision) or alternatively refer the case back to the General Court;

— annul or, in the alternative, reduce the fines set out in Article 2(1)(a) of the Decision or alternatively refer the case back to the General Court; and

— order the Commission to pay the cost of the proceedings.