

EUROPEAN PARLIAMENT

2004



2009

Committee on Petitions

10.06.2008

NOTICE TO MEMBERS

Subject: Petition 1092/2007 by Mrs Joan O'Sullivan (Irish), on problems with their investment in a French property through a leaseback scheme sponsored by the French government

1. Summary of petition

The petitioner asks the European Parliament for help as she risks suffering a serious financial loss as result of her investment into a property in France. The petitioner maintains that she bought an apartment in France, in 2006, under a leaseback scheme sponsored by the French government and linked to the development of the rural areas. According to the petitioner, under the scheme, investors have been allowed the refund of the VAT on the property provided they enter into a lease with a management company for 9 years, which she did. The petitioner explains that the rental company Transmontagne is likely to go into liquidation, which would result in the impossibility to fulfil the 9-years lease contract. The petitioner, who might be asked to repay the VAT on her property although she is not responsible for the breach of the terms of the purchase contract, criticizes the passivity of the French authorities and asks that solutions be found to reassure investors.

2. Admissibility

Declared admissible on 14 March 2008. Information requested from Commission under Rule 192(4).

3. Commission reply, received on 10 June 2008.

The petitioner is concerned about being requested to repay a VAT reimbursement she

benefited from upon the acquisition of a property in a French ski resort. This reimbursement was granted under the condition that the property is rented for a 9 year period. The management company, responsible for the rental of the property, is likely to go into liquidation.

The petitioner hopes that the European Parliament will ask the French government to assist in the above and also to reassure investors by guaranteeing that they will not request the repayment of VAT on leaseback properties.

The Commission would like to mention that this unfortunate situation has already been the subject of a written question by Ms Kathy Sinnott, MEP, to the Commission (E-5636/07).

The Commission would like to clarify the question of this VAT reimbursement granted to the petitioner and its possible repayment, in order to explain the case. For this purpose, it is necessary to refer to the provisions of the VAT Directive¹.

On the one hand, as a general rule, under the provisions of Article 135 (1) point (j) and 12 (1) of the VAT Directive, the supply, before first occupation, of a building or parts of a building and of the land on which the building stands, for consideration, by a taxable person acting as such², should be subject to VAT.

In accordance with these provisions, under French VAT law, the first sale of a new property within five years of its completion (Article 257.7 of the French General Tax Code) is subject to VAT and the petitioner has therefore had to pay VAT on his acquisition of real estate in France.

On the other hand, pursuant to Article 168 of the VAT Directive, a taxable person shall be entitled to deduct the VAT in respect of supply to him of goods and services, only in so far as the goods and services are used for the purposes of further taxable transactions. Again, as a general rule, the "*leasing or letting of immovable property*" is in principle exempt from VAT according to Article 135 (1) point (l) of the VAT Directive. However, as an exception, this exemption does not apply, according to Article 135 (2) point (a) of the VAT Directive to "*the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function, including the provision of accommodation in holiday camps or on sites developed for use as camping sites*".

Accordingly, under Article 261 D (4) of the French General Tax Code, VAT is applicable to certain rental agreements, in particular in case of classified "tourism residence", and under certain conditions (in particular 9 year contracts signed with a management company that takes certain commitments).

Based on these provisions, the VAT paid on the acquisition of a new property could originally

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347 11 December 2006).

² According to Article 12 (1) of the VAT Directive, the Member States may also regard as a taxable person anyone who carries out, on a occasional basis, this type of transaction.

be deducted by the petitioner since she had entered into a 9 year contract with a management company and was engaged in a renting activity. Unfortunately, however, we understand that the petitioner could be unable to meet the requirement to have a 9 year contract because the management company could be put into liquidation.

In these circumstances, according to Articles 184 to 192 of the VAT Directive, VAT deductions shall be adjusted in particular if a capital good (including immovable property) is no longer used for a VAT taxable activity. In the case of immovable property acquired as capital goods, the adjustment period may be extended up to 20 years.

Under French Administrative Documentation (3 A-1152), this adjustment reduction may be applied in case of classified "tourism residence" when the obligation to have a 9 year contract is broken.

This explains why the petitioner could be required to repay the VAT originally reimbursed to her. Such a situation would not breach the provisions of the VAT Directive.

For the sake of completeness, the Commission would like to add that according to the French Administrative Documentation (3A-1152), the 9 year contract may be transferred to another management company, which could take over the commitments entered into by the first management company.

The Commission considers that this case does not present evidence of a general administrative practice or a legislation that would not be in conformity with the European VAT legislation. Therefore, the Commission is not in a position to get involved in the problems the petitioner is facing, as regards its VAT aspects.