

CASE C-484/06 AHOLD

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In *Ahold*, the Court of Justice was faced with an entirely novel question, which was how a retailer should account for output tax in the everyday situation where it sold goods to final consumers at VAT inclusive selling prices and the amount of VAT due included a fraction of the smallest currency unit in payment.

To give an example, suppose a shop charges £1.15 for a packet of cheese. At 17.5%, the VAT on that purchase would be 17.12765957 pence. Obviously, the retailer cannot physically hand over the sum of 0.12765957 pence to Revenue & Customs. However, the issue is whether the retailer can consistently round down the VAT or whether it should instead adopt arithmetic rounding; rounding down amounts of less than 0.5 pence and rounding up amounts of 0.5 pence or greater. A further question is whether the rounding should be conducted on every separately identified item which is purchased by the consumer or whether any rounding should take place at some higher level – for example, on all of the products purchased on the same occasion by the same consumer or on all of the products bought by all customers from the retailer during any VAT period.

In *Ahold*, the issue arose because a supermarket company in the Netherlands began to calculate the output tax at two of its stores by rounding the VAT charged on each item sold down to the nearest whole cent. It sought to keep for itself the fraction of a cent between the VAT charged to the customer and the nearest whole cent..

Ahold argued that it was entitled to those fractions of a cent on the basis that it would be contrary to Community law to apply arithmetic rounding, because this would require it to account for a higher proportion of the sale price than the relevant Dutch national rate of VAT in cases where the VAT on an item was 0.5 pence or greater and arithmetical rounding would require rounding up.

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Ahold therefore applied for a refund of the output tax which it claimed it had wrongly overpaid for those two stores.

However, as Advocate General Sharpston pointed out at paragraph 39 of her Opinion in *Ahold*, "It might be objected that a fraction of a cent is a tiny amount, and not such as to compromise seriously the integrity of the VAT system. However, where a fraction of a cent is multiplied by the number of items sold in a given tax period, the impact can be considerable". Indeed, the United Kingdom pointed out in *Ahold* that, if the four largest supermarket chains in the U.K. were permitted to operate rounding down per article, it would lead to a rounding down of the VAT which the supermarket chains accounted for of well in excess of £70 million per year. Therefore, somewhat unsurprisingly, Ahold's request was rejected by the Dutch tax authorities, who would only accept the arithmetic rounding of each till receipt.

In view of those arguments, the Dutch Supreme Court referred two questions to the ECJ. First, it asked whether the rounding of VAT amounts was governed solely by national law or whether it is also a matter for Community law. Secondly, if rounding was a matter for Community law, the Supreme Court then asked whether Member States were required to permit rounding down per article, as argued by Ahold.

On the first issue, the Court of Justice held that it was a matter for the legal system of each Member State to determine the methods and rules for rounding of an amount declared by way of VAT. It noted in particular that neither the First nor the Sixth VAT Directives contained any explicit rule concerning the rounding of amounts of VAT. Furthermore, it could not be inferred from either Article 11A of the Sixth VAT Directive, which specified that the taxable amount was the whole consideration obtained by the supplier for the supply, or from the invoicing requirements contained in Article 22 of the Sixth VAT Directive, that a specific method of rounding had been laid down by Community law.

However, the Court of Justice entered a caveat: although the question as to which specific method of rounding should be used was not within the scope of Community law, any method of rounding chosen by the Member States had to fall within "the limits of Community law", including the principles of fiscal neutrality and proportionality.

Turning to the second question, as to whether Member States were obliged to allow retailers to round down per item, the Court of Justice held that the principle of fiscal neutrality did not entail any requirement that a particular method of rounding be applied. Similarly, with regard to the principle of proportionality, the Court held that it "does not contain requirements from which it can be inferred that only one method of rounding, namely that involving rounding down per item the amount of VAT, is able to satisfy the principle of proportionality".

It would appear from this that the Court of Justice accepted that it was a matter for each of the Member States to determine the particular method of rounding to be applied, as well as the point at which rounding was to take place. The Court also made a favourable reference to a part of the Advocate General's Opinion in which she was dealing with arithmetic rounding, which indicates that this method is acceptable.

However, the Court of Justice did not go on to explore the range of methods of rounding which could also be acceptable. Nevertheless, AG Sharpston herself indicated that it was compatible with Community law for a Member State to delay rounding for traders not issuing invoices until the end of each VAT period. At paragraph 49 of her Opinion, she commented that "No rounding need take

place at all until an actual payment of VAT has to be made, separate from any indication of VAT-inclusive prices. That stage is not reached until the amount due with each regular return in accordance with Article 22(5) of the Sixth Directive is calculated ... If rounding is confined to the final stage, the result is more accurate and the burden of calculation is, moreover, reduced".

The *Ahold* case is also of interest to the extent that it touches upon the further question as to how rounding should be applied to traders who make supplies to other taxable persons and who are required to issue invoices. This raises the further question whether Member States are able to permit different methods of rounding for such traders to those permitted for retailers making sales to final consumers.

On this point, the Court of Justice simply stated that the principle of fiscal neutrality required that taxable persons must not be treated differently, "with regard to the method of rounding applied when VAT is calculated, in respect of similar services which are in competition with each other". However, AG Sharpston appeared to accept that supplies to taxable persons were different from supplies to final consumers because there was less risk of distortion through rounding, since "where the output tax charged by the supplier represents input tax which will subsequently be deducted by the customer, the amount neither burdens nor benefits either party and, because the output tax and the input tax cancel each other out by the operation of the deduction system, the amount collected on the supply to the final consumer at the end of the VAT chain is unaffected".

A further case on rounding, Case C-484/06 *J.D. Wetherspoon* is currently pending before the Court and it may be that further guidance will be provided then.

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