

**Joined Cases C-439/04 and C-440/04**

**Axel Kittel**

v

**État belge**

and

**État belge**

v

**Recolta Recycling SPRL**

(References for a preliminary ruling from the

Cour de cassation (Belgium))

(Sixth VAT Directive – Deduction of input tax – ‘Carousel’ fraud – Contract of sale incurably void under domestic law)

Summary of the Judgment

*Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Deduction of input tax*

*(Council Directive 77/388, Art. 17)*

Where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, Article 17 of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover, as amended by Directive 95/7, must be interpreted as meaning that it precludes a rule of national law under which the fact that the contract of sale is void – by reason of a civil law provision which renders that contract incurably void as contrary to public policy on the ground that the basis of the contract is unlawful by reason of a matter which is attributable to the seller – causes that taxable person to lose the right to deduct the value added tax he has paid. It is irrelevant in this respect whether the fact that the contract is void is due to fraudulent evasion of value added tax or to other fraud.

By contrast, where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of value added tax, it is for the national court to refuse that taxable person entitlement to the right to deduct.

(see paras 52, 59-61, operative part)

