JUDGMENT OF THE COURT (Sixth Chamber)
6 March 1997 *

In Case C-167/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Gerechtshof te 's-Hertogenbosch (Netherlands) for a preliminary ruling in the proceedings pending before that court between

Maatschap M. J. M. Linthorst, K. G. P. Pouwels and J. Scheres c. s.

and

Inspecteur der Belastingdienst/Ondernemingen Roermond

on the interpretation of Article 9 of the 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 1977 L 145, p. 1),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray, C. N. Kakouris (Rapporteur), P. J. G. Kapteyn and G. Hirsch, Judges,

* Language of the case: Dutch.

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Maatschap M. J. M. Linthorst, K. G. P. Pouwels and J. Scheres c. s., by R. M. Vermeulen, Tax Adviser,

— the Netherlands Government, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent,

— the Italian Government, by U. Leanza, Head of the Department for Diplomatic Legal Affairs of the Ministry of Foreign Affairs, acting as Agent, assisted by M. Fiorilli, Avvocato dello Stato,

— the Commission of the European Communities, by B. J. Drijber, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Netherlands Government, represented by J. S. van den Oosterkamp, Assistant Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, the Italian Government, represented by M. Fiorilli, and the Commission, represented by B. J. Drijber, at the hearing on 24 October 1996,

after hearing the Opinion of the Advocate General at the sitting on 28 November 1996,

gives the following

Judgment

1 By order of 18 May 1995, received at the Court on 31 May 1995, the Gerechtshof (Regional Court of Appeal) 's-Hertogenbosch referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 9 of the 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 1977 L 145, p. 1; 'the Sixth Directive').

2 That question was raised in proceedings between the partnership M. J. M. Linthorst, K. G. P. Pouwels and J. Scheres c. s. ('Linthorst'), established at Ell (Netherlands), and the Netherlands tax authorities concerning payment of value added tax ('VAT') in respect of services supplied by the partnership outside the Netherlands.

3 It appears from the case-file relating to the main proceedings that Linthorst, in which all the partners are veterinary surgeons, operates a general veterinary practice. In February 1994 Linthorst invoiced traders (cattle farmers) established in Belgium a total of HFL 5 110 for veterinary services. The services, which did not include the supply of medicinal products, related to animals located in Belgium. The Belgian farmers to whom the services were supplied had no fixed establishments outside Belgium.

4 In its VAT return to the Netherlands tax authorities for the period in question relating to a total of HFL 32 027, Linthorst included HFL 894 in respect of services supplied to the Belgian farmers. Subsequently, it lodged a complaint with a view to recovering that sum, which was rejected by the competent Netherlands authority. Linthorst appealed to the Gerechtshof te 's-Hertogenbosch.

5 Linthorst argued that the derogation provided for in the third or fourth indent of Article 9(2)(c) of the Sixth Directive should be applied and that, as a result, the place where the services in question were supplied was the place where they were physically carried out, namely Belgium. In the alternative, Linthorst submitted that the third indent of Article 9(2)(e) of the Sixth Directive was applicable and that hence the place where the services in question were supplied was the place where the customers had established their places of business, namely also Belgium. Linthorst therefore considers that it is not liable to Netherlands VAT in respect of the services supplied in Belgium.

6 The relevant provisions of Article 9 of the Sixth Directive are as follows:

'1. The place where a service is supplied shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

2. However:

...

(c) the place of the supply of services relating to:

— ...

— ...

— valuations of movable tangible property,

— work on movable tangible property,

shall be the place where those services are physically carried out;

...

(e) the place where the following services are supplied when performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides:

— ...

— ...

— services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the supplying of information,

...'

7 The national court considers that services supplied by veterinary surgeons do not fall within the instances set out in the third or fourth indent of Article 9(2)(c) of the Sixth Directive or within those set out in the third indent of Article 9(2)(e). It therefore takes the view that in this case the main rule laid down by Article 9(1) of the Sixth Directive is applicable, with the result that the place where the services in question were supplied is the place where the supplier of the services has established his business.

8 Nevertheless, the Gerechtshof te 's-Hertogenbosch decided to stay proceedings and refer the following question to the Court on the ground that it was essential to have that provision interpreted by the Court with a view to its uniform application having regard to the divergent positions adopted by the tax authorities in some Member States:

'Should Article 9 of the Sixth Directive be interpreted as meaning that the place where a veterinary surgeon supplies his services as such should be deemed to be the place where he has established his business or has a fixed establishment from which the services are supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides, or should that article be interpreted as meaning that the place where a veterinary surgeon supplies his services as such is located elsewhere, namely at the place where those services are physically carried out or at the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides?'

9 Consequently, it is necessary to consider the relevant provisions of Article 9 of the Sixth Directive in order to determine which of them covers services provided by veterinary surgeons.

10 As regards the relationship between Article 9(1) and Article 9(2), the Court has already held that Article 9(2) sets out a number of specific instances of places where certain services are deemed to be supplied, whereas Article 9(1) lays down the general rule on the matter. The object of those provisions is to avoid, first, conflicts of jurisdiction, which may result in double taxation, and, secondly, non-taxation, as Article 9(3) indicates, albeit only as regards specific situations (Case 168/84 *Berkholz* v *Finanzamt Hamburg-Mitte-Altstadt* [1985] ECR 2251, paragraph 14, and Case C-327/94 *Dudda* [1996] ECR I-4595, paragraph 20).

11 It follows that, when Article 9 is interpreted, Article 9(1) in no way takes precedence over Article 9(2). In every situation, the question which arises is whether it is covered by one of the instances mentioned in Article 9(2); if not, it falls within the scope of Article 9(1) (*Dudda*, paragraph 21).

12 The first instance set out in Article 9(2) which may be relevant in this case is 'valuations of movable tangible property' [third indent of Article 9(2)(c)].

13 The term 'valuations', as it is understood in common parlance, signifies — as the German Government and the Commission have pertinently observed — examination of the physical condition or investigation of the authenticity of a good with a view to estimating its value or quantifying work to be carried out or the extent of damage sustained.

14 In contrast, the principal function of a veterinary surgeon is to make a scientific assessment of animals' health, take preventive medical action, effect diagnoses and provide therapeutic treatment for sick animals. Although the services provided by a veterinary surgeon may indeed on occasion include estimating the value of an animal or a herd, that cannot be regarded as constituting the task characteristic of a veterinary surgeon's duties. It must therefore be held that the services principally and habitually performed by a veterinary surgeon do not fall within the concept of 'valuations' and hence are not covered by the third indent of Article 9(2)(c) of the Sixth Directive.

15 The second instance set out in Article 9(2) which should be considered is 'work on movable tangible property' [fourth indent of Article 9(2)(c)].

16 That phrase, in common with those used in the other language versions of the provision in question, calls to mind, in common parlance, purely physical action on movable tangible property which is, by nature, in principle neither scientific nor intellectual. Even though the Dutch version is somewhat ambiguous, it must be interpreted consistently with the other language versions.

17 In contrast, the principal duties of a veterinary surgeon basically consist — as observed in paragraph 14 of this judgment — in the provision of therapeutic treatment administered to animals in accordance with scientific rules. Whilst the provision of such treatment sometimes necessitates physical action on the animal, that is not sufficient for it to be described as 'work'. Moreover, as the German Govern-

ment rightly observed, such a broad interpretation of the term 'work' would make the third indent of Article 9(2)(c) redundant in so far as it would cover valuations.

18 It should therefore be held that the services principally and habitually provided by a veterinary surgeon do not fall within the fourth indent of Article 9(2)(c) of the Sixth Directive either.

19 The third possible hypothesis in this case is services of 'consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services' [third indent of Article 9(2)(e)].

20 It should be noted that the only common feature of the disparate activities mentioned in that provision is that they all come under the heading of liberal professions. Yet, as the German Government rightly observed, if the Community legislature had intended all activities carried on in an independent manner to be covered by that provision, it would have defined them in general terms.

21 Moreover, if the legislature had intended that provision to cover the medical profession generally, as an activity typically carried out in an independent manner, it would have included it in the list, since, as the national court and the Advocate General in paragraph 22 of his Opinion pertinently observe, other provisions

of the Sixth Directive, such as in particular the transitional exception provided pursuant to Article 28(3)(b) in conjunction with Annex F, specifically mention the services of veterinary surgeons.

22 It is appropriate to add that, whereas veterinary surgeons' duties sometimes involve advisory or consultancy aspects, that fact is not enough to bring the principal and habitual activities of the profession of veterinary surgeon within the concepts of 'consultants' or 'consultancy bureaux' or to cause them to be regarded as 'similar'.

23 It must therefore be held that the typical duties of a veterinary surgeon do not fall within the third indent of Article 9(2)(e) of the Sixth Directive.

24 Since none of the specific instances of places where certain services are deemed to be supplied which are mentioned in Article 9(2) of the Sixth Directive are applicable in this case, it must be held, in accordance with the judgment in *Dudda*, that the principal and habitual services of veterinary surgeons fall within Article 9(1) of the Sixth Directive.

25 The answer to the national court's question must therefore be that Article 9 of the Sixth Directive must be interpreted as meaning that the place where the services principally and habitually carried out by a veterinary surgeon should be deemed to be supplied is the place where the supplier has established his business or has a fixed establishment from which the services are supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

Costs

26 The costs incurred by the Netherlands, German and Italian Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Gerechtshof te 's-Hertogenbosch by order of 18 May 1995, hereby rules:

Article 9 of the 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 must be interpreted as meaning that the place where the services principally and habitually carried out by a veterinary surgeon should be deemed to be supplied is the place where the supplier has established his business or has a fixed establishment from which the services are supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

Mancini Murray Kakouris

Kapteyn Hirsch

Delivered in open court in Luxembourg on 6 March 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber