JUDGMENT OF THE COURT (First Chamber)

3 April 2008 *

In Case C-124/07,

REFERENCE for a preliminary ruling under Article 234 EC, by the Hoge Raad der Nederlanden (Netherlands), made by decision of 9 February 2007, received at the Court on 2 March 2007, in the proceedings

J.C.M. Beheer BV

v

Staatssecretaris van Financiën,

THE COURT (First Chamber),

composed of P. Jann, President of Chamber, A. Tizzano, A. Borg Barthet, M. Ilešič and E. Levits (Rapporteur), Judges,

* Language of the case: Dutch.

Advocate General: E. Sharpston,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 January 2008,

after considering the observations submitted on behalf of:

— the Netherlands Government, by C. Wissels and M. de Mol, acting as Agents,

— the United Kingdom Government, by Z. Bryanston-Cross and P. Harris, acting as Agents,

— Commission of the European Communities, by R. Lyal, A. Weimar and W. Roels, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 13B(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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 The reference was made in the course of proceedings between J.C.M. Beheer BV, a company incorporated under Netherlands law, and Staatssecretaris van Financiën concerning a supplementary turnover tax assessment in the amount of NLG 55 561 (EUR 25 244) issued to it in respect of the period from 1 January 1997 to 31 December 1998.

Legal context

The Sixth Directive

3 Under Article 2(1) of the Sixth Directive, the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such is to be subject to value added tax ('VAT').

4 Article 13 of the Sixth Directive, entitled 'Exemptions within the territory of the country', provides:

'…

B. Other exemptions

Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:

(a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;

…'

National legislation

5 Article 1 of the Law of 1968 on turnover tax (Wet op de omzetbelasting 1968, hereinafter 'the 1968 Law'), in the version applicable in the main proceedings, is drafted in the following terms:

'A tax called "turnover tax" shall be levied on:

(a) the supply of goods or services effected in the Netherlands by traders in the course of their business;

…’

6 Under Article 11(1)(k) of the 1968 Law, which transposes Article 13B(a) of the Sixth Directive into Netherlands law:

‘1 Subject to conditions to be laid down by decree, the following are exempt from the tax:

…

k. insurance transactions and services performed by insurance agents;

…’

The dispute in the main proceedings and the question referred to the Court

7 The appellant in the main proceedings acts as a sub-agent on behalf of VDL Polisassuradeuren BV (‘VDL’) a company incorporated under Netherlands law which itself acts as an insurance broker and insurance agent.

8 VDL acts as an insurance agent in the conclusion of insurance contracts and as an 'authorised agent' for certain insurance companies. In that capacity, VDL concludes insurance contracts independently in the name of those insurers.

9 The activities which the appellant in the main proceedings carries out in the name and on behalf of VDL concern the conclusion of insurance contracts, the processing of transfers of insurance policies, the issue of such policies, the payment of commissions and provision of information to the insurance company and policyholders. In addition, it offers and concludes new insurance policies independently and on its own initiative.

10 Under the contract between VDL and the appellant in the main proceedings, the latter receives from VDL, in return for the services provided, a commission equal to 80% of the commission paid to VDL for the conclusion of an insurance contract. If the insurance lapses, the appellant in the main proceedings is required to repay the proportion of the commission it received which corresponds, pro rata, to the unexpired term of the contract.

11 A supplementary turnover tax assessment in the amount of NLG 55 561 (EUR 25 244) was issued to the appellant in the main proceedings in respect of the period from 1 January 1997 to 31 December 1998.

12 After an unsuccessful objection and the dismissal of the appeal it had lodged before the Gerechtshof te 's-Hertogenbosch (Regional Court of Appeal, 's-Hertogenbosch) on the ground that it could not rely on the exemption laid down in Article 11(1)(k) of the 1968 Law, the appellant in the main proceedings appealed on a point of law to the court making the reference.

13 Taking the view that an interpretation of Community law was necessary in order for it to reach a decision in the main action, the Hoge Raad der Nederlanden decided to stay the proceedings and submit the following question to the Court of Justice for a preliminary ruling:

'Do the provisions of Article 13 B(a) of the Sixth Directive extend to activities of a (legal) person which performs characteristic and essential activities of an insurance broker and insurance agent, whereby negotiations are carried out in the name of another insurance broker or insurance agent in connection with the bringing about of insurance transactions?'

The question referred to the Court

14 As a preliminary point, it should be noted that the terms used to specify the exemptions provided for by Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (Case C-8/01 *Taksatorringen* [2003] ECR I-13711, paragraph 36; Case C-472/03 *Arthur Andersen* [2005] ECR I-1719, paragraph 24; and Case C-453/05 *Ludwig* [2007] ECR I-5083, paragraph 21).

15 It is also settled case-law that those exemptions constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another and which must be placed in the general context of the common system of VAT (Case C-240/99 *Skandia* [2001] ECR I-1951, paragraph 23, *Arthur Andersen*, paragraph 25, and *Ludwig*, paragraph 22).

16 In order to provide a useful answer to the question referred to the Court, it must be determined whether, notwithstanding the fact that the appellant in the main proceedings is only in an indirect relationship with one of the parties to an insurance contract, in the conclusion of which it has been instrumental through the intermediary of another taxable person who is himself in a direct relationship with that party and to whom that appellant is contractually bound, the services provided to that end are none the less services related to insurance and reinsurance transactions performed by insurance brokers and insurance agents within the meaning of Article 13B(a) of the Sixth Directive.

17 It should be pointed out, first of all, that it has already been held that recognition of a person as an insurance broker or agent presupposes an examination of what the activities in question comprise (see, to that effect, *Arthur Andersen*, cited above, paragraph 32).

18 It is sufficient to note, in that regard, that it can be seen from the order for reference that the activities carried out by the appellant in the main proceedings, as described in paragraph 9 of the present judgment, are unquestionably the characteristic activities of an insurance broker or agent.

19 Secondly, it is clear that neither the Sixth Directive nor Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities (OJ 1977 L 26, p. 14) contain any indication concerning the relationship between an insurance broker or agent with the parties to an insurance contract in the conclusion of which he has been instrumental.

20 However, the Court has decided, in paragraph 44 of the judgment in *Taksatorringen*, cited above, to which the national court refers in its order for reference, that the expression 'related services performed by insurance brokers and insurance agents' in Article 13B(a) of the Sixth Directive refers only to services provided by professionals who have a relationship with both the insurer and the insured party.

21 The Netherlands Government points out in that regard that the appellant in the main proceedings does not have any relationship with the insurers and acts on behalf of, and in the name of, VDL, which is the real insurance broker and agent. The Netherlands Government concludes that the appellant cannot claim the benefit of the exemption provided for in Article 13B(a) of the Sixth Directive in respect of services which it provides as an insurance broker and agent. That is clear, in particular, from paragraph 44 of *Taksatorringen* and paragraph 33 of *Arthur Andersen*.

22 However, the Netherlands Government's argument concerning the relationship which the sub-agent and the insurance broker and agent must maintain with the parties to the insurance contract cannot be upheld.

23 On the one hand, it is clear from the order for reference that, although the appellant in the main proceedings does not have a formal relationship with the insurers on whose behalf VDL acts, it none the less has an indirect relationship with those insurers. Thus, through its contract with VDL, which itself has a contractual relationship with the insurers, the applicant in the main proceedings, acting in the name and on behalf of VDL, is indirectly linked with those insurers.

24 However, it should be pointed out that, in the case-law on which the Netherlands Government bases its interpretation, the Court did not indicate the nature of the

relationship between the insurance agent or broker and the parties to the insurance contract and, therefore, it did not limit the nature of that relationship to a specific form.

25 Thus, although the Court considered that the activities carried on by the taxable persons in question in *Taksatorringen* and *Arthur Andersen* did not, of their nature, constitute activities related to insurance transactions carried out by an insurance broker or an insurance agent within the meaning of Article 13B(a) of the Sixth Directive, it did not seek to analyse the relationship of those taxable persons with the insurers and the insured parties (see, to that effect, *Taksatorringen*, paragraphs 44 to 46, and *Arthur Andersen*, paragraph 36).

26 Consequently, the appellant in the main proceedings cannot be refused the benefit of the exemption provided for in Article 13B(a) of the Sixth Directive merely because it does not have a direct relationship with the insurers on whose behalf it acts indirectly, as a sub-agent of VDL, in regard to insurance policyholders.

27 Moreover, the wording of Article 13B(a) of the Sixth Directive does not, in principle, preclude the activity of insurance broker and agent from being broken down into separate services which may then fall within the definition of '[insurance and reinsurance transactions, including] related services performed by insurance brokers and insurance agents' (see, to that effect, with regard to Article 13B(d)(3) of the Sixth Directive, Case C-2/95 *SDC* [1997] ECR I-3017, paragraph 64; with regard to Article 13B(d)(6) of the directive, see Case C-169/04 *Abbey National* [2006] ECR I-4027, paragraph 67; and with regard to Article 13B(d)(1) of the directive, see *Ludwig*, paragraph 34).

28 In those circumstances, it follows from the principle of fiscal neutrality that traders must be able to choose the form of organisation which, from the strictly commercial point of view, best suits them, without running the risk of having their transactions excluded from the exemption provided for in Article 13B(a) of the Sixth Directive (see, to that effect, with regard to Article 13B(d)(6) of the Sixth Directive, *Abbey National*, paragraph 68, and with regard to Article 13B(d)(1) of the directive, see *Ludwig*, paragraph 35).

29 In the light of the foregoing considerations, the answer to the question referred to the Court should be that Article 13B(a) of the Sixth Directive must be interpreted as meaning that the fact that an insurance broker or agent does not have a direct relationship with the parties to the insurance or reinsurance contract in the conclusion of which he has been instrumental, but merely an indirect relationship with them through the intermediary of another taxable person who is, himself, in a direct relationship with one of those parties, and to whom that insurance broker or agent is contractually bound does not prevent the service provided by the latter from being exempt from VAT under that provision.

Costs

30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 13B(a) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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 fact that an insurance broker or agent does not have a direct relationship with the parties to the insurance or reinsurance contract in the conclusion of which he has been instrumental, but merely an indirect relationship with them through the intermediary of another taxable person who is, himself, in a direct relationship with one of those parties, and to whom the insurance broker or agent is contractually bound does not prevent the service provided by the latter from being exempt from value added tax under that provision.

[Signatures]