JUDGMENT OF THE COURT (Second Chamber)
3 February 2000 *

In Case C-12/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Audiencia Provincial de Palma de Mallorca, Spain, for a preliminary ruling in the proceedings pending before that court between

Miguel Amengual Far

and

Juan Amengual Far

on the interpretation of Article 13B(b) 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 (OJ 1977 L 145, p. 1),

* Language of the case: Spanish.

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, G. Hirsch (Rapporteur) and V. Skouris, Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Spanish Government, by S. Ortiz Vaamonde, Abogado del Estado, acting as Agent,

— the French Government, by K. Rispal-Bellanger, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and G. Mignot, Secretary for Foreign Affairs in that Directorate, acting as Agents,

— the Commission of the European Communities, by M. Díaz-Llanos, Legal Adviser, C. Gómez de la Cruz and E. Traversa, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 March 1999,

having regard to the Second Chamber's order to re-open the oral procedure of 24 September 1999,

after hearing the Opinion of the Advocate General at the sitting on 21 October 1999,

gives the following

Judgment

1 By order of 12 January 1998, received at the Court on 20 January 1998, the Audiencia Provincial de Palma de Mallorca (Provincial Court, Palma, Mallorca) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of Article 13B(b) 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 (OJ 1977 L 145, p.1, hereinafter 'the Sixth Directive').

2 The questions have been raised in proceedings between Miguel Amengual Far, a landlord and his brother, Juan Amengual Far, his tenant, concerning the latter's

eviction for failure to pay in good time the part of the rent corresponding to value added tax (hereinafter 'VAT') on business premises which he was renting.

3 The court making the references seeks to ascertain whether VAT applies to lettings of business premises.

4 It states that it follows from Article 4(2)(b) and Article 11(2) of Law No 37/1992 of 28 December 1992 that in Spain all lettings of commercial premises are subject to VAT. Article 20(23) of that Law exempts only 'tenancies considered to be services within the meaning of Article 11 of this Law ... the subject matter of which are:

(a) ...

(b) buildings or parts of buildings to be used exclusively for dwelling purposes, including garages and annexes to those buildings, and movable property let jointly with them.

...'

5 The national court is, however, unsure whether Law No 37/1992 may thus make lettings of business premises subject to VAT without infringing Article 13B(b) of the Sixth Directive.

6 Article 13B(b) of the Sixth Directive provides:

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

(a) ...

(b) the leasing or letting of immovable property excluding:

1. 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;

2. the letting of premises and sites for parking vehicles;

3. lettings of permanently installed equipment and machinery;

4. hire of safes.

Member States may apply further exclusions to the scope of this exemption'.

7 Taking the view that an interpretation of Community law was necessary in order for it to deliver its judgment, the Audiencia Provincial de Palma de Mallorca decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Has the Spanish law on VAT, by making subject to that tax any letting or lease of immovable property in which an economic activity is pursued, correctly transposed Article 13B of Directive 77/388/EEC?

2. Should the Court rule that Article 13B of Directive 77/388/EEC has not been correctly transposed, is that Community provision, in so far as it lays down a

general exemption from VAT in respect of leases of immovable property, directly applicable?'

The first question

8 By its first question the national court asks in substance whether Article 13B(b) of the Sixth Directive allows Member States, by a general rule, to subject to VAT lettings of immovable property and, by way of exception, to exempt only lettings of immovable property to be used for dwelling purposes.

9 The Spanish Government first points out that, in the Spanish version, the second subparagraph of Article 13B(b) of the Sixth Directive is worded incorrectly in so far as it suggests that the Member States may extend the scope of the exemption to other cases.

10 In that regard, it must be stated, as the Advocate General points out in point 7 of his Opinion of 18 March 1999, and as is clear from the other language versions of Article 13B(b) of the Sixth Directive and from the context of that article, that the second subparagraph of that provision allows Member States to provide for further exclusions to the scope of the exemption laid down for the letting of

immovable property (see, to this effect, the judgment in Case C-63/92 *Lubbock Fine* [1993] ECR I-6665, paragraph 13).

11 However, the national court inquires whether Law No 37/1992 may subject to VAT lettings of immovable property to be used for purposes other than dwelling purposes, so that the subjection to VAT of lettings of immovable property for the exercise of an economic activity arises from the application of a general rule and not from an exception to the general exemption rule laid down in Article 13B(b) of the Sixth Directive.

12 As regards that question, it must be remembered that, according to Article 189(3) of the EC Treaty (now Article 249(3) EC), a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed but leaves to the national authorities the choice of form and methods.

13 Furthermore, it is clear from the actual words of Article 13B(b) and C of the Sixth Directive that the latter has left the Members States wide discretion as to whether the transactions concerned are to be exempt or taxed.

14 It is therefore immaterial that a Member State which considers it appropriate to subject to VAT all lettings of immovable property to be used otherwise than for dwelling purposes achieves this result by means of a general rule which subjects all lettings of immovable property to VAT and which exempts only lettings of immovable property for dwelling purposes or arrives at that same result by means of exceptions to a general rule exempting lettings of immovable property.

15 The answer to be given to the first question must therefore be that Article 13B(b) of the Sixth Directive allows Member States, by means of a general rule, to

subject to VAT lettings of immovable property and, by way of exception, to exempt only lettings of immovable property to be used for dwelling purposes.

The second question

16 Having regard to the answer given to the first question, it is not necessary to reply to the second question.

Costs

17 The costs incurred by the Spanish and French Governments and by the Commission, 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 (Second Chamber)

in answer to the questions referred to it by the Audiencia Provincial de Palma de Mallorca by order of 12 January 1998, hereby rules:

Article 13B(b) 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 allows Member States, by means of a general rule, to subject to value added tax lettings of immovable property and, by way of exception, to exempt only lettings of immovable property to be used for dwelling purposes.

Schintgen Hirsch Skouris

Delivered in open court in Luxembourg on 3 February 2000.

R. Grass

Registrar

R. Schintgen

President of the Second Chamber