Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

20 October 2016*

(Reference for a preliminary ruling — Taxation — Value added tax — Sixth Directive — Article 28c(A)(a) and (d) — Transfer of goods within the European Union — Right to an exemption — Failure to comply with an obligation to provide a VAT identification number issued by the Member State of destination — No specific evidence of tax evasion — Refusal to grant the exemption — Whether permissible))

In Case C-24/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht München (Finance Court, Munich, Germany), made by decision of 4 December 2014, received at the Court on 21 January 2015, in the proceedings

Josef Plöckl

v

Finanzamt Schrobenhausen,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, C. Vajda (Rapporteur), K. Jürimäe and C. Lycourgos, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 20 January 2016,

after considering the observations submitted on behalf of:

— the Finanzamt Schrobenhausen, by K. Ostermeier, H. Marhofer-Ferlan and D. Scherer,

— the German Government, by T. Henze, acting as Agent,

— the Greek Government, by K. Nasopoulou and S. Lekkou, acting as Agents,

— the Portuguese Government, by L. Inez Fernandes, A. Cunha and R. Campos Laires, acting as Agents,

— the European Commission, by M. Wasmeier and M. Owsiany-Hornung, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 6 April 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 22(8) 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), as amended by Council Directive 2005/92/EC of 12 December 2005 (OJ 2005 L 345, p. 19) ('the Sixth Directive'), in the version resulting from Article 28h of the Sixth Directive, and the first subparagraph of Article 28c(A)(a) and Article 28c(A)(d) of that directive.

2 The request has been made in proceedings between Mr Josef Plöckl and the Finanzamt Schrobenhausen (Schrobenhausen Tax Office, Germany, 'the Tax Office') concerning the refusal of that office to exempt from value added tax (VAT) the transfer in 2006 from Germany to Spain of a vehicle assigned to Mr Plöckl's undertaking.

Legal context

EU law

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 VAT.

4 In accordance with Article 4(1) of the Sixth Directive, 'taxable person' means any person who independently carries out in any place any economic activity specified in paragraph 2 of that article, whatever the purpose or results of that activity.

5 Article 5(1) of the Sixth Directive defines 'supply of goods' as the transfer of the right to dispose of tangible property as owner.

6 Article 22(8) of the Sixth Directive, in the version resulting from Article 28h thereof, provides:

'Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

…'

7 Article 28a(5) of the Sixth Directive provides:

'The following shall be treated as supplies of goods effected for consideration:

(b) the transfer by a taxable person of goods from his undertaking to another Member State.

The following shall be regarded as having been transferred to another Member State: any tangible property dispatched or transported by or on behalf of the taxable person out of the territory defined in Article 3 but within the Community for the purposes of his undertaking, other than for the purposes of one of the following transactions:

...'

8 The first subparagraph of Article 28c(A)(a) and Article 28c(A)(d) of the Sixth Directive are worded as follows:

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

(a) supplies of goods, as defined in Article 5, dispatched or transported by or on behalf of the vendor or the person acquiring the goods out of the territory referred to in Article 3 but within the Community, effected for another taxable person or a non-taxable legal person acting as such in a Member State other than that of the departure of the dispatch or transport of the goods.

...

(d) the supply of goods, within the meaning of Article 28a(5)(b), which benefit from the exemptions set out above if they have been made on behalf of another taxable person.'

German law

9 Paragraph 3(1a) of the Umsatzsteuergesetz (Law on turnover tax), in the version in force at the material time ('the UStG'), provides:

'The transfer of an undertaking's goods from the national territory to another part of the territory of the Community by a trader in order to be disposed of by him, other than for use only on a temporary basis, shall be treated as a supply for consideration, even where the trader has imported the goods into national territory. The trader shall be regarded as a supplier.'

10 In accordance with Paragraph 4(1)(b) of the UStG, intra-Community supplies are to be exempt from tax.

11 Paragraph 6a of the UStG defines an intra-Community supply, inter alia, as follows:

'...

2. The transfer of goods treated as a supply of goods shall also be regarded as an intra-Community supply (Paragraph 3(1a) of [the UStG]).

3. The trader must demonstrate that the conditions laid down in subparagraphs 1 and 2 have been met ...'

12 Paragraph 17c(1) and (3) of the Umsatzsteuer-Durchführungsverordnung (Regulation on the implementation of turnover tax), in the version in force at the material time, provides:

‘1. In the case of intra-Community supplies (Paragraph 6a(1) and (2) of [the UStG]), a trader to whom this regulation applies must provide accounting evidence that the conditions for exemption from tax have been complied with, including the [VAT] identification number of the person acquiring the goods. Compliance with those conditions must be clearly and easily verifiable from the accounts.

...

3. In the case of a transfer treated as a supply (Paragraph 6a(2) of [the UStG]), the trader shall indicate the following:

...

(2) the address and turnover tax identification number of the part of the undertaking located in the other Member State;

...’

The dispute in the main proceedings and the question referred for a preliminary ruling

13 In 2006, Mr Plöckl, a sole trader, acquired a vehicle which he assigned to his undertaking. On 20 October 2006, he dispatched the vehicle to a dealer established in Spain with a view to selling it in Spain. That dispatch was evidenced by a CMR consignment note (dispatch note drawn up on the basis of the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol of 5 July 1978). On 11 July 2007, the vehicle was sold to an undertaking established in Spain.

14 Mr Plöckl did not declare any turnover in respect of that transaction for 2006. For 2007, he declared a VAT-exempt intra-Community supply to that undertaking.

15 In the context of an external audit, the Tax Office took the view that the conditions applicable to an intra-Community supply were not satisfied and that the transaction was a supply which was required to be taxed in Germany in respect of the year 2007. It therefore issued a VAT amendment notice for 2007.

16 During the subsequent proceedings before the Finanzgericht München (Finance Court, Munich, Germany), that court established that the vehicle at issue in the main proceedings was already in Spain in 2007, which led the Tax Office to annul that amendment notice.

17 Following that annulment, the Tax Office corrected the VAT calculation for 2006, taking the view that the transfer of the vehicle to Spain in 2006 was subject to VAT and was not exempt, since Mr Plöckl had not provided a VAT identification number issued by Spain and had not, therefore, produced the accounting evidence required for the purposes of exemption from VAT.

18 Mr Plöckl brought an action against that decision before the referring court. That court is of the view, first, that there was no intra-Community supply owing to the absence of a sufficient temporal and material link between the dispatch of the vehicle to Spain and its sale in Spain and, secondly, that the intra-Community transfer effected in 2006 is subject to VAT under Paragraph 3(1a) of the UStG.

19 However, the referring court wonders whether that transfer should be exempt from VAT. It notes that, while Mr Plöckl did not take all reasonable measures to provide a VAT identification number issued by the Member State of destination, there is no specific evidence of tax evasion and the Tax Office rules out any such evasion. According to the referring court, Mr Plöckl simply made an error of law in recording the transfer and subsequent sale as an intra-Community supply and did not make a false statement to the Tax Office.

20 In that respect, the referring court refers to paragraph 58 of the judgment of 27 September 2012, *VSTR* (C-587/10, EU:C:2012:592), from which it follows that the exemption from VAT of an intra-Community supply may be made subject to the provision by the supplier of the VAT identification number of the person acquiring the goods, with the proviso that the grant of that exemption should not be refused on the sole ground that that requirement was not fulfilled where the supplier, acting in good faith and having taken all the measures which can reasonably be required of him, is unable to provide that identification number but provides other information which is such as to demonstrate sufficiently that the person acquiring the goods is a taxable person acting as such in the transaction at issue.

21 The referring court considers that the Court's reasoning in that judgment is also applicable to an intra-Community transfer, such as that at issue in the main proceedings, and that it can be inferred from it that, in the present case, exemption from VAT may be refused on the ground that Mr Plöckl did not take all reasonable measures to provide a VAT identification number issued by the Member State of destination.

22 However, the referring court notes that, in paragraph 52 of that judgment, the Court held that it is legitimate to require that a supplier act in good faith and take every measure which can reasonably be required of him to ensure that the transaction that he effects does not lead to his participation in tax evasion. It is therefore of the view that a taxable person cannot be required to take reasonable measures unless there is specific evidence of tax evasion.

23 In the absence of specific evidence of tax evasion, the referring court considers that exemption from VAT cannot be refused where the substantive conditions for such exemption are met, as they are in the case before it, the production of a VAT identification number not constituting such a condition. In those circumstances, such a refusal would be contrary to the principles of fiscal neutrality and proportionality.

24 The Finanzgericht München (Finance Court, Munich) therefore decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do Article 22(8) of the Sixth Directive, in the version resulting from Article 28h thereof, and the first subparagraph of Article 28c(A)(a) and Article 28c(A)(d) of the Sixth Directive permit Member States to refuse to grant a tax exemption in respect of an intra-Community supply (in this instance, an intra-Community transfer) where, although the supplier has not taken all the measures that can reasonably be expected of him from the point of view of the formal requirements applicable to the recording of the VAT identification number, there is no specific evidence of tax evasion, the goods have been moved to another Member State and the other conditions of exemption from tax are also met?'

Consideration of the question referred

25 By its question, the referring court asks, in essence, whether Article 22(8) of the Sixth Directive, in the version resulting from Article 28h thereof, and the first subparagraph of Article 28c(A)(a) and Article 28c(A)(d) of that directive must be interpreted as precluding a tax authority of the Member State of origin from refusing to exempt an intra-Community transfer from VAT on the ground that

the taxable person has not provided a VAT identification number issued by the Member State of destination, where there is no specific evidence of tax evasion, the goods have been moved to another Member State and the other conditions of exemption from tax are also met.

26 In accordance with the first subparagraph of Article 28a(5)(b) of the Sixth Directive, the transfer by a taxable person of goods from his undertaking to a Member State other than that in which that undertaking is established is to be treated as a supply of goods effected for consideration. Such a transfer therefore constitutes, under Article 2(1) and Article 5(1) of the Sixth Directive, a transaction that is subject to VAT.

27 The conditions which must be satisfied in order for a transaction to be capable of being described as an intra-Community transfer for the purposes of Article 28a(5)(b) of the Sixth Directive are laid down in the second subparagraph of that provision, according to which the following are to be regarded as having been transferred to another Member State: any tangible property dispatched or transported by or on behalf of the taxable person out of the territory defined in Article 3 of that directive but within the European Union for the purposes of his undertaking, with the exception of certain transactions listed in that subparagraph.

28 It is apparent from Article 28c(A)(d) of the Sixth Directive that such an intra-Community transfer must be exempted from VAT in the Member State of origin in so far as it benefits from the exemptions set out in Article 28c(A)(a) to (c) of the Sixth Directive if it has been made on behalf of another taxable person.

29 It follows from this that, for the purposes of exemption from VAT, an intra-Community transfer, as referred to in Article 28a(5)(b), is to be treated, in particular, as an intra-Community supply in respect of which there is provision for exemption from VAT in the first subparagraph of Article 28c(A)(a) of the Sixth Directive. The conditions for the exemption of such an intra-Community transfer are apparent from the latter provision, there being no need for the transfer to have been made on behalf of another taxable person. The goods concerned must therefore be dispatched or transported by or on behalf of the taxable person out of the territory referred to in Article 3 of that directive but within the European Union, and that transfer must be effected for that taxable person or a non-taxable legal person acting as such in a Member State other than that of the departure of the dispatch or transport of the goods.

30 Moreover, as the Advocate General noted in points 59 to 61 of his Opinion, the substantive conditions for an intra-Community transfer, as referred to in the second subparagraph of Article 28a(5)(b) of the Sixth Directive and set out in paragraph 27 of the present judgment, must also be satisfied if such a transfer is to be exempt from VAT.

31 That being the case, it must be stated that transferring goods for the purposes of the taxable person's undertaking, as stated in that provision, implies that the transfer is effected for that taxable person 'acting as such' within the meaning of the first subparagraph of Article 28c(A)(a) of the Sixth Directive. It has consistently been held that a taxable person acts in that capacity where he carries out transactions in the course of his taxable activity (see, to that effect, judgments of 27 September 2012, *VSTR*, C-587/10, EU:C:2012:592, paragraph 49, and of 8 November 2012, *Profitube*, C-165/11, EU:C:2012:692, paragraph 52).

32 According to the referring court, the transaction at issue in the main proceedings must be regarded as an intra-Community transfer for the purposes of Article 28a(5)(b) of the Sixth Directive. It notes in that regard that the vehicle acquired by Mr Plöckl was assigned to his undertaking in Germany and then dispatched to Spain with a view to its continued use by Mr Plöckl for business purposes.

33 It follows from this, as is also apparent from the wording of the question put by the referring court, that the conditions for the VAT exemption of the transfer at issue in the main proceedings were satisfied. However, the exemption was refused by the Tax Office on the ground that Mr Plöckl had failed to provide it with a VAT identification number issued by the Kingdom of Spain, as required under Paragraph 17c(3) of the Regulation on the implementation of turnover tax, in the version in force at the material time.

34 In its written observations, the European Commission submits that the aim of that requirement to communicate the VAT identification number issued by the Member State of destination is, in the case of an intra-Community transfer, to demonstrate that the taxable person has transferred the goods in question in that Member State 'for the purposes of his undertaking', which, as is clear from paragraphs 30 and 31 of the present judgment, is a condition for the exemption of such a transfer from VAT. At the hearing, the Tax Office and the German Government confirmed that objective of the requirement. The question referred for a preliminary ruling thus concerns the rules of evidence liable to be imposed, and the circumstances in which they may be so imposed, in order to demonstrate that that condition of exemption is satisfied.

35 In that connection, the Court has held that, in the absence of any provision on that subject in the Sixth Directive, which provides only, in the first sentence of Article 28c(A), that Member States are to lay down the conditions subject to which they may exempt intra-Community supplies of goods, the question of the evidence which may be adduced by taxable persons in order to be exempted from VAT falls within the competence of the Member States (judgment of 27 September 2012, *VSTR*, C-587/10, EU:C:2012:592, paragraph 42 and the case-law cited). That applies also to the intra-Community transfers referred to in Article 28c(A)(d).

36 In addition, Article 22(8) of the Sixth Directive, in the version resulting from Article 28h thereof, gives Member States the option of adopting measures to ensure the correct collection of VAT and the prevention of tax evasion, provided that they do not go further than is necessary to attain those objectives. Such measures may not therefore be used in such a way that they would have the effect of undermining the neutrality of VAT, which is a fundamental principle of the common system of VAT (judgment of 27 September 2012, *VSTR*, C-587/10, EU:C:2012:592, paragraph 44 and the case-law cited).

37 Such a national measure goes further than is necessary to ensure the correct collection of the tax if, in essence, it makes the right of exemption from VAT subject to compliance with formal obligations, without any account being taken of the substantive requirements and, in particular, without any consideration being given as to whether those requirements have been satisfied. Transactions should be taxed taking into account their objective characteristics (see, to that effect, judgment of 27 September 2007, *Collée*, C-146/05, EU:C:2007:549, paragraphs 29 and 30).

38 However, as regards the objective characteristics of an intra-Community transfer, it follows from paragraph 30 of the present judgment that if a transfer of goods meets the conditions laid down in the second subparagraph of Article 28a(5)(b) of the Sixth Directive, that transfer is exempt from VAT (see, by analogy, judgment of 27 September 2007, *Collée*, C-146/05, EU:C:2007:549, paragraph 30).

39 Accordingly, the principle of fiscal neutrality requires that an exemption from VAT be allowed if the substantive conditions are satisfied, even if the taxable person has failed to comply with some of the formal requirements (see, by analogy, judgment of 27 September 2007, *Collée*, C-146/05, EU:C:2007:549, paragraph 31).

40 In that regard, the Court has held, in connection with an intra-Community supply, that an obligation to communicate the VAT identification number of the person acquiring the goods constitutes a formal requirement with regard to the right to exemption from VAT (see, to that effect, judgment of 27 September 2012, *VSTR*, C-587/10, EU:C:2012:592, paragraph 51).

41 The same applies to an obligation to provide, in connection with an intra-Community transfer, the taxable person's VAT identification number issued by the Member State of destination. While the provision of that number is proof that such a transfer has been effected for the purposes of that taxable person's undertaking and, therefore, as is apparent from paragraph 31 of the present judgment, that that taxable person is acting as such in that Member State, proof of that capacity cannot, in every case, depend exclusively on the provision of that VAT identification number. Article 4(1) of the Sixth Directive, which defines 'taxable person', does not make that capacity subject to the possession by that person of a VAT identification number (see, to that effect, judgment of 27 September 2012, *VSTR*, C-587/10, EU:C:2012:592, paragraph 49). The provision of that number is not, therefore, a substantive condition for the exemption from VAT of an intra-Community transfer.

42 It follows from the foregoing that an authority of a Member State cannot, in principle, refuse to grant an exemption from VAT in respect of an intra-Community transfer on the sole ground that the taxable person has not provided the VAT identification number issued to him by the Member State of destination.

43 As the Advocate General noted in point 81 of his Opinion, the case-law of the Court has, however, recognised two situations in which the failure to meet a formal requirement may result in the loss of entitlement to an exemption from VAT.

44 In the first place, the principle of fiscal neutrality cannot be invoked for the purposes of an exemption from VAT by a taxable person who has intentionally participated in tax evasion which has jeopardised the operation of the common system of VAT (see, to that effect, judgments of 7 December 2010, *R.*, C-285/09, EU:C:2010:742, paragraph 54, and of 27 September 2012, *VSTR*, C-587/10, EU:C:2012:592, paragraph 46).

45 However, the referring court has found that there is no specific evidence of tax evasion in the dispute in the main proceedings and that the Tax Office has ruled out any such evasion. Therefore, that exception to the rule that an exemption from VAT must be allowed, even if a formal condition has not been met, if the substantive requirements are satisfied, is not applicable to this dispute.

46 In the second place, non-compliance with a formal requirement may lead to the refusal of an exemption from VAT if that non-compliance would effectively prevent the production of conclusive evidence that the substantive requirements have been satisfied (see, to that effect, judgments of 27 September 2007, *Collée*, C-146/05, EU:C:2007:549, paragraph 31, and of 27 September 2012, *VSTR*, C-587/10, EU:C:2012:592, paragraph 46).

47 It follows, however, from the very condition to which that refusal to allow an exemption from VAT is subject, that, where the authority has the information necessary to establish that the substantive requirements have been satisfied, it cannot, in relation to the taxable person's right to an exemption, impose additional conditions which may have the effect of rendering that right ineffective for practical purposes (see, by analogy, judgment of 11 December 2014, *Idexx Laboratories Italia*, C-590/13, EU:C:2014:2429, paragraph 40 and the case-law cited).

48 As indicated in paragraphs 30 and 31 of the present judgment, the substantive conditions for an intra-Community transfer laid down in Article 28a(5)(b) of the Sixth Directive correspond, in essence, to the substantive conditions for the exemption of such a transfer from VAT set out in Article 28c(A)(a) of that directive.

49 Consequently, since, as is apparent from paragraph 32 of the present judgment, in the context of the dispute in the main proceedings, even though Mr Plöckl failed to provide a VAT identification number issued by the Member State of destination, the referring court found that the transaction

concerned must be regarded as an intra-Community transfer for the purposes of Article 28a(5)(b) of the Sixth Directive, it must be concluded that the Tax Office had information from which it could also be established that the conditions for the exemption of that transfer were satisfied.

50 It therefore appears that neither of the two situations in which the Court has recognised that an authority may refuse to grant an exemption from VAT because of non-compliance with a formal requirement is applicable in circumstances such as those of the dispute in the main proceedings.

51 The referring court nevertheless refers to paragraph 58 of the judgment of 27 September 2012, *VSTR* (C-587/10, EU:C:2012:592), in which the Court held that the first subparagraph of Article 28c(A)(a) of the Sixth Directive does not preclude the tax authority of a Member State from making the exemption from VAT of an intra-Community supply subject to the provision by the supplier of the VAT identification number of the person acquiring the goods, with the proviso that the grant of that exemption should not be refused on the sole ground that that requirement was not fulfilled where the supplier, acting in good faith and having taken all the measures which can reasonably be required of him, is unable to provide that identification number but provides other information which is such as to demonstrate sufficiently that the person acquiring the goods is a taxable person acting as such in the transaction at issue. The referring court queries whether it follows from this that a taxable person who, in the context of an intra-Community transfer, has not taken all the measures which can reasonably be required of him to provide the authority with a VAT identification number issued by the Member State of destination may be refused an exemption from VAT.

52 The Court did not intend to establish such a general rule in the judgment of 27 September 2012, *VSTR* (C-587/10, EU:C:2012:592).

53 In paragraph 46 of that judgment, the Court expressly confirmed the case-law according to which, other than in the two situations mentioned in paragraphs 44 and 46 of the present judgment, the principle of fiscal neutrality requires that an exemption from VAT be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements.

54 Furthermore, as the Advocate General noted in point 111 of his Opinion, it is apparent in particular from paragraph 52 of the judgment of 27 September 2012, *VSTR* (C-587/10, EU:C:2012:592), that the finding relating to the inability of a taxable person, acting in good faith, who has taken every measure which can reasonably be required of him, to provide the VAT identification number of the person acquiring the goods, covers situations in which the issue is that of establishing whether or not the taxable person has participated in tax evasion. The Court thus held that the supplier's participation in such tax evasion could be ruled out having regard to the fact that that supplier, acting in good faith and having taken all the measures which could reasonably be required of him, was unable to provide the VAT identification number of the person acquiring the goods.

55 It follows that, in circumstances such as those of the dispute in the main proceedings, in which the taxable person's participation in tax evasion has in any event been ruled out, he cannot be refused an exemption from VAT on the ground that he did not take all the measures which could reasonably be required of him in order to satisfy a formal obligation, namely provision of the VAT identification number issued by the Member State of destination of the intra-Community transfer.

56 Before this Court, the Tax Office and the German Government nevertheless emphasised the crucial importance of the VAT identification number as a verification tool in a mass system involving a large number of intra-Community transfers.

57 However, that consideration can neither transform a formal requirement into a substantive requirement in the common system of VAT, nor justify a refusal to grant an exemption on account of non-compliance with a formal requirement imposed by national law implementing the Sixth Directive.

58 While Article 22(8) of the Sixth Directive, in the version resulting from Article 28h thereof, allows Member States to adopt measures to ensure the correct collection of VAT and the prevention of evasion, such a refusal to allow an exemption would go further than is necessary to attain those objectives, since such an infringement of national law can be penalised by a fine proportionate to the seriousness of the infringement (see, by analogy, judgments of 9 July 2015, *Salomie and Oltean*, C-183/14, EU:C:2015:454, paragraphs 62 and 63, and of 15 September 2016, *Barlis 06 — Investimentos Imobiliários e Turísticos*, C-516/14, EU:C:2016:690, paragraphs 47 and 48).

59 In the light of the foregoing, the answer to the question referred is that Article 22(8) of the Sixth Directive, in the version resulting from Article 28h thereof, and the first subparagraph of Article 28c(A)(a) and Article 28c(A)(d) of that directive must be interpreted as precluding a tax authority of the Member State of origin from refusing to exempt an intra-Community transfer from VAT on the ground that the taxable person has not provided a VAT identification number issued by the Member State of destination, where there is no specific evidence of tax evasion, the goods have been moved to another Member State and the other conditions of exemption from tax are also met.

Costs

60 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 (Fourth Chamber) hereby rules:

Article 22(8) 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, as amended by Council Directive 2005/92/EC of 12 December 2005, in the version resulting from Article 28h of that Sixth Directive, and the first subparagraph of Article 28c(A)(a) and Article 28c(A)(d) of that directive must be interpreted as precluding a tax authority of the Member State of origin from refusing to exempt an intra-Community transfer from VAT on the ground that the taxable person has not provided a VAT identification number issued by the Member State of destination, where there is no specific evidence of tax evasion, the goods have been moved to another Member State and the other conditions of exemption from tax are also met.

[Signatures]