JUDGMENT OF THE COURT (Third Chamber)

28 October 2010*

In Case C-175/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Court of Appeal of England and Wales (Civil Division) (United Kingdom), made by decision of 8 April 2009, received at the Court on 14 May 2009, in the proceedings

Commissioners for Her Majesty's Revenue and Customs

v

AXA UK PLC,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, D. Šváby, R. Silva de Lapuerta, G. Arestis and T. von Danwitz (Rapporteur), Judges,

* Language of the case: English.

Advocate General: P. Cruz Villalón,
Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 3 June 2010,

after considering the observations submitted on behalf of:

— AXA UK PLC, by J. Peacock QC and M. Angiolini, Barrister,

— the United Kingdom Government, by H. Walker, acting as Agent, and R. Hill, Barrister,

— the German Government, by M. Lumma and C. Blaschke, acting as Agents,

— the Greek Government, by S. Spiropoulos, I. Bakopoulos, G. Kanellopoulos and V. Karra, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Fiorentino, avvocato dello Stato,

— the European Commission, by R. Lyal and M. Afonso, 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(d)(3) 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'), which provides for the exemption from value added tax ('VAT') of transactions concerning, among other things, payments or transfers.

2 The reference was made in the course of proceedings between the Commissioners for Her Majesty's Revenue and Customs ('the Commissioners') and AXA UK PLC ('AXA') concerning the liability to VAT of fees charged by Denplan Limited ('Denplan') in consideration of the supply to its clients of services which, AXA claims, should be exempt from VAT.

Legal context

European Union legislation

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 Article 13 of the Sixth Directive, headed '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:

…

(d) the following transactions:

…

3. transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring;

…'

National legislation

5 The exemption provided for in Article 13B(d)(3) of the Sixth Directive was implemented in the United Kingdom in the form of Item 1 of Group 5 of Schedule 9 to the Value Added Tax Act 1994, which exempts from VAT: '[t]he issue, transfer or receipt of, or any dealing with, money, any security for money or any note or order for the payment of money'.

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

6 AXA is the representative member of a VAT group which includes Denplan. Denplan operates a range of services for dentists designed to support the operation of their practices, the main one of which is the operation of payment plans between dentists and their patients. Under such plans, dentists provide their patients with a particular level of dental care, including regular check ups and/or any necessary treatment, on a continuing basis against payment by those patients of a fixed monthly charge.

7 If a dentist's patient wishing to take advantage of Denplan's services opts for a payment plan, the patient will sign a contract with the dentist, the terms of which are set out in a standard form produced by Denplan which typically provides that the patient is to pay the monthly charge to Denplan, which acts as the dentist's agent in receiving payments due to that dentist. At the same time, the patient completes and signs a standard form of 'mandate' in favour of Denplan under the United Kingdom's 'direct debit' scheme. The direct debit mandate constitutes a standing instruction by a bank's customer, in this case the patient, to the bank to make any payment requested by a particular third party, in this case Denplan. The mandate will include the name and address of the patient's bank, as well as the patient's bank account number.

8 Denplan, upon receiving a copy of the contract and the direct debit mandate completed by the patient, will record the patient's details, including, particularly, his name and address, on its computer systems, and will lodge, by means of an electronic system, details of the mandate with the patient's bank. That mandate will remain in force

as a standing instruction to the patient's bank until the patient notifies the bank that he wishes to cancel the mandate.

9 Each month, on a particular date, Denplan will seek to collect the payments due from dentists'patients. To do so it creates for each patient an electronic file which it uses to transmit information to the Bankers' Automated Clearing System ('the BACS'), an automated inter-bank settlement system established and operated by a company all the members of which are major United Kingdom banks. The information which Denplan transmits to the BACS includes, in respect of each patient, the patient's bank account number and the amount which Denplan is to collect from that account. The BACS will then transmit that information on to the processing centre of the relevant bank.

10 If the patient has not cancelled the direct debit mandate, and if the patient's account remains open and is sufficiently in credit for the payment to be made, the bank will debit the patient's account and notify the BACS accordingly. The BACS will then post a corresponding credit to Denplan's bank for the credit of Denplan's account. By this method, the amount requested is transferred from the patient's bank account to Denplan's bank account. The BACS sends Denplan reports as to which payments have been made and which have not. Denplan, in its turn, provides payment advices to the relevant dentists and contacts the patients whose payments it has not received.

11 About 10 days after it receives the payments into its account, Denplan accounts to each dentist for the payments it has received from the accounts of that dentist's patients less certain agreed deductions. Denplan does this by instructing its own bank to transfer from Denplan's bank account to the relevant dentist's bank account a sum representing the total amount due to that dentist.

12 One of the deductions that Denplan retains from each payment it receives on behalf of a dentist is a fee which it charges the dentist. That deduction is calculated as a percentage of each payment received. According to the decision making the reference, a part of those fees deducted from the patients'payments constitutes consideration for Denplan's services in collecting payment for the dentists, which services consist in seeking payments from patients' bank accounts via the direct debit system, and accounting to the dentists for them. It is the VAT status of that element which is in dispute before the referring court.

13 By a decision made in June 2006, the Commissioners refused a claim by AXA for overpaid VAT in respect of its VAT accounting periods from March 2002 to December 2004. By a second decision, of September 2006, the Commissioners raised an assessment for VAT on services supplied during the accounting periods from March 2005 to March 2006. Both decisions were based on a finding that the fees charged to dentists by Denplan were consideration for supplies of services that were subject to VAT.

14 In July and October 2006, AXA lodged appeals against those decisions before the London VAT and Duties Tribunal which decided that the fees were exempt from VAT on the basis that they constituted consideration for a financial service falling within Article 13B(d)(3) of the Sixth Directive. The Commissioners' appeal against that decision was dismissed by the High Court of Justice of England and Wales (Chancery Division, Revenue List). The Commissioners then appealed to the referring court.

15 In the referring court's view, the main issue before it is whether the exemption from VAT provided for in Article 13B(d)(3) of the Sixth Directive for 'transactions...

concerning... payments, transfers' is applicable to a service, provided to a client, namely a dentist, who wishes to receive payments from third parties, namely patients, of collecting sums from those third parties' bank accounts via the direct debit system, and accounting to the client for all the payments received.

16 In that regard, the referring court refers to the judgment in Case C-2/95 *SDC* [1997] ECR I-3017, in particular to paragraphs 53 and 66 thereof, where the Court held that '[f]or "a transaction concerning transfers", the services provided must … have the effect of transferring funds and entail changes in the legal and financial situation'.

17 Since it considers that the result of the main proceedings depends on the interpretation of European Union law, the Court of Appeal of England and Wales (Civil Division) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) What are the characteristics of an exempt service that has "the effect of transferring funds and entail[s] changes in the legal and financial situation"? In particular:

(a) Is the exemption applicable to services which would not otherwise have to be performed by any of the financial institutions which (i) make a debit to one account, (ii) make a corresponding credit to another account, or (iii) perform an intervening task between (i) [and] (ii)?

(b) Is the exemption applicable to services which do not include the carrying out of tasks of making a debit to one account and a corresponding credit to another account, but which may, where a transfer of funds results, be seen as having been the cause of that transfer?

(2) In the light of *SDC*, is a trader (which is not itself a bank) performing an exempt service in accordance with Article 13B(d)(3) [of the Sixth Directive] where the tasks he carries out for his client

(1) comprise the collection, processing and onward payment of monies due to the client from a third party; in particular, the tasks of:

(a) transmitting information to the third party's bank calling for a payment from the third party's bank account to the trader's own bank account, in reliance on a standing authorisation given by that third party to the bank (pursuant to the "direct debit" scheme); and subsequently, if the bank makes that payment,

(b) giving an instruction to his own bank to transfer funds from his account to the client's bank account

but (2) do not include tasks of (a) making a debit to one bank account, (b) making a corresponding credit to another bank account, or (c) performing any intervening task between (a) and (b)?

(3) Does it make a difference to the answer to Question 2 (above) if the service described in that question is performed by transmitting the information to an electronic system which then automatically communicates with the relevant bank, even if the transmission of the information may not always result in a transfer being made (e.g. because the third party has cancelled his standing authorisation to his bank or does not have sufficient funds in his account)?'

Consideration of the questions referred

18 By its questions, which it is appropriate to consider together, the referring court is asking, in essence, whether Article 13B(d)(3) of the Sixth Directive must be interpreted as meaning that a service such as that in question in the main proceedings is or is not exempt from VAT.

19 That service of 'collecting payments', provided by Denplan to its clients as described, in particular, in the second question under 1(a) comprises the collection, processing and onward payment of sums of money due from third parties, namely patients, to Denplan's clients, namely, dentists. That service consists, in particular, in transmitting information to the third party's bank calling for the transfer of a certain sum of money from the third party's bank account to the service supplier's bank account in reliance on a standing authorisation given by that third party to his or her bank, and subsequently giving an instruction to the service supplier's own bank to transfer funds from its account to the client's bank account. Meanwhile, the service supplier sends to its

client a statement of the sums received and contacts third parties from whom it has not received a transfer of the sum requested.

20 Since that service encompasses various actions, it must, in the first place, be determined whether, for VAT purposes, and in particular the interpretation of the provision referred to in the questions referred, Denplan supplies its clients with several distinct and independent services requiring separate assessment or a single complex service comprising several elements (see, to that effect, in particular Case C-41/04 *Levob Verzekeringen and OV Bank* [2005] ECR I-9433, paragraphs 18 and 20; Case C-425/06 *Part Service* [2008] ECR I-897, paragraphs 48 and 49; and Case C-461/08 *Don Bosco Onroerend Goed* [2009] ECR I-11079, paragraph 34).

21 Indeed, in certain circumstances, several formally distinct services, which could be supplied in isolation and thus give rise, separately, to taxation or exemption, must be considered to be a single transaction when they are not independent. This is particularly true where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (see, to that effect, *Part Service*, paragraphs 51 and 53; Case C-572/07 *RLRE Tellmer Property* [2009] ECR I-4983, paragraphs 18 and 19; and *Don Bosco Onroerend Goed*, paragraphs 36 and 37).

22 According to the Court's case-law, where a transaction comprises a bundle of features and acts, regard must be had to all the circumstances in which the transaction in question takes place in order to determine whether there are two or more distinct supplies or one single supply (see, to that effect, in particular *Levob Verzekeringen and*

OV Bank, paragraph 19; Case C-111/05 *Aktiebolaget NN* [2007] ECR I-2697, paragraph 21; and *Don Bosco Onroerend Goed*, paragraph 38).

23 As regards transactions such as those referred to in the decision making the reference, the actions performed by Denplan, examined for the purposes of VAT, are indissociably connected. The economic purpose of those actions is the transfer of the sum due each month from the patient to the dentist. The transfer of the sum due to the service supplier's bank account is of no use to its client unless that sum, less the service supplier's remuneration, is then paid to the client and the service supplier accounts to that client for the sums received. Consequently, the service in question in the main proceedings, in circumstances such as those described by the referring court, must be regarded as forming a single transaction for the purposes of VAT.

24 As regards, in the second place, the issue whether a service such as that in question in the main proceedings comes within the exemption from VAT under Article 13B(d)(3) of the Sixth Directive relating to transactions concerning payments or transfers, it is settled case-law, in that regard, that the exemptions referred to in Article 13 constitute independent concepts of European Union law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another (see, in particular, Case C-169/04 *Abbey National* [2006] ECR I-4027, paragraph 38; Case C-455/05 *Velvet & Steel Immobilien* [2007] ECR I-3225, paragraph 15; Case C-242/08 *Swiss Re Germany Holding* [2009] ECR I-10099, paragraph 33; and Case C-86/09 *Future Health Technologies* [2010] ECR I-5215, paragraph 28).

25 It is also clear from the case-law that the terms used to specify the exemptions set out in 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 goods and services

supplied for consideration by a taxable person. Nevertheless, the interpretation of those terms must not deprive the exemption in question of its intended effect (see, to that effect, *Don Bosco Onroerend Goed*, paragraph 25 and the case-law cited; *Future Health Technologies*, paragraph 30; and Case C-581/08 *EMI Group* [2010] ECR I-8607, paragraph 20).

26 It should also be noted that the transactions exempted under Article 13B(d)(3) of the Sixth Directive are defined in terms of the nature of the services provided and not in terms of the person supplying or receiving the service (see *SDC*, paragraphs 32 and 56; Case C-305/01 *MKG-Kraftfahrzeuge-Factoring* [2003] ECR I-6729, paragraph 64; and *Swiss Re Germany Holding*, paragraph 44 and the case-law cited). The exemption is therefore not subject to the condition that the transactions be effected by a certain type of institution or legal person, where the transactions in question relate to the sphere of financial transactions (see, to that effect, *SDC*, paragraph 38; *Velvet & Steel Immobilien*, paragraph 22; and *Swiss Re Germany Holding*, paragraph 46).

27 Finally, the Court has ruled, as regards various exemptions under Article 13B(d) of the Sixth Directive, that, in order to be regarded as exempt transactions the services in question must, viewed broadly, form a distinct whole, fulfilling the specific, essential functions of a service described in that provision (see, to that effect, *SDC*, paragraphs 66 and 75 (relating to Article 13B(d)(3) and (5) of the Sixth Directive); Case C-235/00 *CSC Financial Services* [2001] ECR I-10237, paragraphs 25 and 27 (relating to Article 13B(d)(5)); and *Abbey National*, paragraph 70 (as regards Article 13B(d)(6)).

28 As regards the service in question in the main proceedings, it is appropriate to point out that its purpose is to benefit Denplan's clients, namely dentists, by the payment of the sums of money due to them from their patients. Denplan is, in return for

remuneration, responsible for the recovery of those debts and provides a service of managing those debts for the account of those entitled to them. Therefore, as a matter of principle, that service constitutes a transaction concerning payments which is exempt under Article 13B(d)(3) of the Sixth Directive, unless it is 'debt collection or factoring', a service which that provision, by its final words, expressly excludes from the list of exemptions.

29 In the absence of a definition of the term 'debt collection and factoring' in the Sixth Directive, it is necessary to view the final words of Article 13B(d)(3) of the Sixth Directive in their context and to interpret them in the light of the spirit of the provision in question and, more generally, of the scheme of that directive (*MKG-Kraftfahrzeuge-Factoring*, paragraph 70; see to that effect, also, Case 173/88 *Henriksen* [1989] ECR 2763, paragraph 11; and Case C-16/93 *Tolsma* [2004] ECR I-743, paragraph 10).

30 Although, as observed in paragraph 25 of the present judgment, the exemptions under Article 13 of the Sixth Directive, as derogations from the general application of VAT, are to be interpreted strictly, the term 'debt collection and factoring' is to be interpreted broadly as it is an exception to such derogation, with the result that the transactions which it covers are subject to tax in accordance with the fundamental rule forming the basis of the Sixth Directive (see *MKG-Kraftfahrzeuge-Factoring*, paragraphs 72, 73 and 75, and, by analogy, Case C-171/00 P *Libéros* v *Commission* [2002] ECR I-451, paragraph 27).

31 According to the Court's case-law, the term 'debt collection and factoring' in Article 13B(d)(3) of the Sixth Directive refers to financial transactions designed to obtain payment of a pecuniary debt (see *MKG-Kraftfahrzeuge-Factoring*, paragraph 78).

32 It follows from that case-law that the service in question in the main proceedings supplied by Denplan to dentists is covered by the term 'debt collection and factoring' in Article 13B(d)(3) of the Sixth Directive.

33 In fact, the object of that service is to benefit Denplan's clients, namely dentists, by payment of the sums of money due to them from their patients. That service is therefore intended to obtain the payment of debts. By undertaking the recovery of debts for the account of those entitled to them, Denplan frees its clients of tasks which, without its intervention, those clients, as creditors, would have to perform themselves, tasks consisting in requesting the transfer of the sums due to them, via the direct debit system.

34 Contrary to the Commission's submission, it is irrelevant that such service is supplied at the time when the debts concerned become due. The final words of Article 13B(d)(3) of the Sixth Directive cover the collection of debts of any nature, without limiting their application to debts which were not paid on their due date. Moreover, factoring, all forms of which are included in the terms 'debt collection and factoring' (see *MKG-Kraftfahrzeuge-Factoring*, paragraph 77), is not limited to debts in respect of which the debtor has already defaulted. It can also have as its object debts which have not yet become due and which will be paid on the due date.

35 In addition, in view of the interpretation of the exception to the derogation from the application of VAT given by the case-law cited in paragraphs 30 and 31 of the present judgment, it is also irrelevant to the treatment of the service in question in the main proceedings as 'debt collection and factoring' that it does not provide for coercive measures for the effective payment of the debts concerned.

36 Having regard to the foregoing considerations, the reply to the questions referred is that Article 13B(d)(3) of the Sixth Directive is to be interpreted as meaning that the exemption from VAT provided for by that provision does not cover a supply of services which consist, in essence, in requesting a third party's bank to transfer to the service supplier's account, via the direct debit system, a sum due from that party to the service supplier's client, in sending to the client a statement of the sums received, in making contact with the third parties from whom the service supplier has not received payment and, finally, in giving instructions to the service supplier's bank to transfer the payments received, less the service supplier's remuneration, to the client's bank account.

Costs

37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

Article 13B(d)(3) 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 is to be interpreted as meaning that the exemption from VAT provided for by that provision does not cover a supply of services which consist, in essence, in requesting a third party's bank to transfer to the service supplier's account, via the direct debit system, a sum due from that party to the service supplier's client, in sending to the

client a statement of the sums received, in making contact with the third parties from whom the service supplier has not received payment and, finally, in giving instructions to the service supplier's bank to transfer the payments received, less the service supplier's remuneration, to the client's bank account.

[Signatures]