JUDGMENT OF THE COURT (Sixth Chamber)

9 March 2006 *

In Case C-114/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Conseil d'État (France), made by decision of 10 January 2005, received at the Court on 8 March 2005, in the proceedings

Ministre de l'Économie, des Finances et de l'Industrie

v

Gillan Beach Ltd,

THE COURT (Sixth Chamber),

composed of J. Malenovský, President of the Chamber, A. Borg Barthet (Rapporteur) and U. Lõhmus, Judges,

* Language of the case: French.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the French Government, by G. de Bergues and C. Jurgensen, acting as Agents,

— the Greek Government, by V. Kyriazopoulos, O. Patsopoulou and M. Tassopoulou, acting as Agents,

— the United Kingdom Government, by C. White and R. Hill, acting as Agents,

— the Commission of the European Communities, 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 The reference for a preliminary ruling concerns the interpretation of Article 9(2) 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, hereinafter 'the Sixth Directive').

2 This reference has been made in proceedings between the Ministre de l'Économie, des Finances et de l'Industrie (Minister for the Economy, Finance and Industry) and Gillan Beach Ltd, a company established in the United Kingdom, concerning a refund of the value added tax ('VAT') which that company paid on purchases of goods and services in France in connection with the organisation of two boat shows in Nice in 1993.

Legal context

Community law

3 Article 1 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11, hereinafter 'the Eighth Directive') provides:

'For the purposes of this Directive, "a taxable person not established in the territory of the country" shall mean a person as referred to in Article 4(1) of Directive 77/388/EEC who, during the period referred to in the first and second sentences of the first subparagraph of Article 7(1), has had in that country neither the seat of his economic activity, nor a fixed establishment from which business transactions are effected, nor, if no such seat or fixed establishment exists, his domicile or normal place of residence, and who, during the same period, has supplied no goods or services deemed to have been supplied in that country ...'

4 Article 2 of the Eighth Directive reads:

'Each Member State shall refund to any taxable person who is not established in the territory of the country but who is established in another Member State, subject to the conditions laid down below, any value added tax charged in respect of services or movable property supplied to him by other taxable persons in the territory of the country or charged in respect of the importation of goods into the country, in so far as such goods and services are used for the purposes of the transactions referred to in Article 17(3)(a) and (b) of Directive 77/388/EEC and of the provision of services referred to in Article 1(b).'

5 As regards determination of the place where a taxable transaction is effected, Article 9 of the Sixth Directive provides:

'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:

(a) the place of the supply of services connected with immovable property, including the services of estate agents and experts, and of services for preparing and coordinating construction works, such as the services of architects and of

firms providing on-site supervision, shall be the place where the property is situated;

(b) ...

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

— cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organisers of such activities, and where appropriate, the supply of ancillary services,

...

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

...'

National law

6 Article 259 A of the code général des impôts (General Tax Code), inserted by Article 28 of the 1978 Amending Finance Law, No 78-1240 of 29 December 1978 (JORF of 30 December 1978, p. 4385), in order to transpose Article 9(2) of the Sixth Directive into domestic law, provides:

'By derogation from the provisions of Article 259, the place of supply of the following services shall be deemed to be in France:

...

4. The following services where they are physically carried out in France:

— cultural, artistic, sporting, scientific, educational, recreational and ancillary services, and organisation of such services.

...'

7 Article 242-0 M of Annex II to the General Tax Code, which transposed Article 1 of the Eighth Directive into domestic law, provides:

'1. Taxable persons established abroad may obtain a refund of [VAT] that has been properly invoiced to them where, during the calendar quarter or year to which the application for refund relates they have had neither the seat of their activity nor a fixed establishment in France nor, in the absence of either of these, their domicile or normal place of residence there, and who, during the same period, have supplied no

goods or services falling within the scope of value added tax for the purposes of Articles 256, 256 A to 258 B, or 259 to 259 C of the General Tax Code.

2. ...'

8 Administrative Instruction 3 A-13-85 of 22 July 1985 from the Directorate General for Taxes states that services provided at fairs, shows, exhibitions and other events fall within the scope of Article 259 A of the General Tax Code and are therefore deemed to be located in France. Similarly, Administrative Instruction 3 D-2-99 of 15 July 1999 from the Directorate General for Taxes states that the provision of a complex package of services to an exhibitor in the context of a trade fair or similar event falls within paragraph 4 of Article 259 A of the General Tax Code.

The dispute in the main proceedings and the question referred

9 Gillan Beach Ltd organised two boat shows in Nice, which took place from 18 to 20 February and 25 to 27 May 1993. It supplied exhibitors with inclusive services comprising, inter alia, setting up stands and means of communication and making them available for use, providing staff to welcome visitors, and renting and arranging surveillance of mooring areas for the boats on show.

10 On 25 October 1993 Gillan Beach Ltd applied, under Article 242-0 M of Annex II to the General Tax Code, for a refund of the VAT on the price of the goods and services

it had purchased in France in order to organise the abovementioned boat shows. That application was rejected by the tax authority on the ground that the organisation of fairs and shows, since it is physically carried out in France, is a service deemed to be provided in France, pursuant to the national provision by which Article 9(2)(c), first indent, of the Sixth Directive was transposed into domestic law. That authority therefore considered that the conditions required for a refund of VAT under the Eighth Directive had not been met in the main proceedings.

11 The Tribunal administratif de Paris (Administrative Court, Paris), hearing the action brought by Gillan Beach Ltd, held that the VAT at issue in the main proceedings must be refunded to that company. That judgment having been upheld by a judgment of the Cour administrative d'appel de Paris (Administrative Court of Appeal, Paris), the Ministre de l'Économie, des Finances et de l'Industrie lodged an appeal on a point of order before the Conseil d'État.

12 Considering that the dispute before it called for an interpretation of Community law, the Conseil d'État decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'[Can] an inclusive service provided by an organiser to exhibitors at a fair or in an exhibition hall fall within the scope of the first indent of Article 9(2)(c) of the Sixth Council Directive ..., Article 9(2)(a) of that directive or within any other of the categories of supply of services referred to in Article 9(2) of the directive?'

Concerning the question referred for a preliminary ruling

13 By its question, the national court asks in essence whether Article 9(2) of the Sixth Directive must be interpreted as meaning that it permits the inclusive service provided by an organiser to exhibitors at a fair or a show to fall within one of the categories of services listed therein.

14 In that regard, it is to be noted that Article 9 of the Sixth Directive contains rules for determining the place where services are deemed to be supplied for tax purposes. Whereas Article 9(1) lays down a general rule on the matter, Article 9(2) sets out a number of specific instances of places where certain services are deemed to be supplied. The object of those provisions is to avoid, first, conflicts of jurisdiction which may result in double taxation, and, secondly, non-taxation (see Case 168/84 *Berkholz* [1985] ECR 2251, paragraph 14; Case C-327/94 *Dudda* [1996] ECR I-4595, paragraph 20; Case C-167/95 *Linthorst, Pouwels en Scheres* [1997] ECR I-1195, paragraph 10; and Case C-452/03 *RAL (Channel Islands) and Others* [2005] ECR I-3947, paragraph 23).

15 It is appropriate also to note that, in respect of the relationship between Article 9(1) and (2) of the Sixth Directive, the Court has held that Article 9(1) in no way takes precedence over Article 9(2). In every situation, the question which arises is whether that situation is covered by one of the instances mentioned in Article 9(2) of that directive. If not, it falls within the scope of Article 9(1) (*Dudda*, paragraph 21; *Linthorst, Pouwels en Scheres*, paragraph 11; and *RAL (Channel Islands) and Others*, paragraph 24).

16 It is therefore necessary to determine the scope of Article 9(2) in the light of its purpose, which is set out as follows in the seventh recital in the preamble to the Sixth Directive:

'... the determination of the place where taxable transactions are effected has been the subject of conflicts concerning jurisdiction as between Member States, in particular as regards supplies of goods for assembly and the supply of services; ... although the place where a supply of services is effected should in principle be defined as the place where the person supplying the services has his principal place of business, that place should be defined as being in the country of the person to whom the services are supplied, in particular in the case of certain services supplied between taxable persons where the cost of the services is included in the price of the goods'.

17 The overall purpose of Article 9(2) of the Sixth Directive is therefore to establish a special system for services provided between taxable persons where the cost of the services is included in the price of the goods.

18 There is a similar purpose underlying the first indent of Article 9(2)(c) of the Sixth Directive, which lays down that the place of the supply of services relating, inter alia, to artistic, sporting and entertainment activities and ancillary services is the place where those services are physically carried out. The Community legislature considered that, in so far as the supplier provides his services in the State in which such services are physically carried out and the organiser of the event charges the final consumer VAT in the same State, the VAT charged on the basis of all those services the cost of which is included in the price of the complete service paid for by that consumer must be paid to that State and not to the State in which the supplier of the service has established his business (see *Dudda*, paragraph 24).

19 As regards the criteria according to which a specified service is to be regarded as being covered by the first indent of Article 9(2)(c) of the Sixth Directive, no particular artistic or sporting level is required, for example, and it is not only services relating, inter alia, to artistic, sporting and entertainment activities, but also services relating merely to similar activities that fall within its scope (see, to that effect, *Dudda*, paragraph 25).

20 It is to be noted that Article 9(2) of the Sixth Directive is a rule of conflict which determines the place of taxation of services and, consequently, delimits the powers of the Member States. It follows that 'similar activities' is a Community concept which must be interpreted uniformly in order to avoid instances of double taxation or non-taxation (see, to that effect, Case C-68/92 *Commission* v *France* [1993] ECR I-5881, paragraph 14).

21 In interpreting a provision of Community law, it is necessary to consider not only the wording of that provision but also the context in which it occurs and the objects of the rules of which it is part (see, inter alia, Case C-17/03 *VEMW and Others* [2005] ECR I-4983, paragraph 41).

22 In view of the objective sought by the Community legislature, as referred to in paragraph 18 above, which is to fix the place of taxable transactions in the Member State in the territory of which the services are physically carried out, wherever the person providing the service has established his business, an activity must be regarded as similar, within the meaning of the first indent of Article 9(2)(c) of the Sixth Directive, where it includes features that are also present in the other categories of activities listed in that provision and which, in the light of that objective, provide justification for the application of that provision to those activities.

23 In that regard, there are grounds for stating, as do the French Government and the Commission of the European Communities, that the features common to the various categories of services referred to in the first indent of Article 9(2)(c) of the Sixth Directive originate in the complex nature of the services concerned, which are various services, and in the fact that those services are generally provided for a number of different recipients, that is to say, all the people taking part, in a variety of capacities, in cultural, artistic, sporting, scientific, educational or entertainment activities.

24 Those various categories of services also have the common feature that they are usually provided for specific events, and the place where those complex services are physically carried out is easy to identify, as a rule, since such events take place at specific locations.

25 A show or a fair, whatever its theme, seeks to provide to a number of different recipients, as a rule in a single place and on a single occasion, a variety of complex services, with the purpose, in particular, of presenting information, goods or events in such a way as to promote them to the visitors. In those circumstances, it must be possible to regard a show or a fair as being covered by the similar activities referred to in the first indent of Article 9(2)(c) of the Sixth Directive.

26 The services relating to the activities listed in the first indent of Article 9(2)(c) of the Sixth Directive include services provided by the organisers of such activities and of activities which must be treated in the same way as those activities.

27 It follows that the inclusive service provided to exhibitors by the organiser of a fair or a show must therefore be regarded as being one of the services referred to in the first indent of Article 9(2)(c) of the Sixth Directive.

28 In the light of the interpretation of that provision given in paragraph 25 above, which is sufficient to determine the place where the service at issue in the main proceedings is provided, there is no need to adjudicate on whether that service can fall within any other category of services mentioned in Article 9(2) of the Sixth Directive.

29 The answer to the question referred should therefore be that the first indent of Article 9(2)(c) of the Sixth Directive must be interpreted as meaning that an inclusive service provided by an organiser to exhibitors at a fair or in an exhibition hall falls within the category of services referred to in 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 (Sixth Chamber) hereby rules:

The first indent of Article 9(2)(c) 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 must be interpreted as meaning that an inclusive service provided by an organiser to exhibitors at a fair or in an exhibition hall falls within the category of services referred to in that provision.

[Signatures]