JUDGMENT OF THE COURT (first chamber)

27 October 2011 *

In Case C-530/09,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Wojewódzki Sąd Administracyjny w Poznaniu (Poland), made by decision of 26 October 2009, received at the Court on 18 December 2009, in the proceedings

Inter-Mark Group sp. z o.o. sp. komandytowa

v

Minister Finansów,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Safjan, M. Ilešič, J.-J. Kasel (Rapporteur) and M. Berger, Judges,

* Language of the case: Polish.

Advocate General: Y. Bot,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 8 December 2010,

after considering the observations submitted on behalf of:

— Inter-Mark Group sp. z o.o. sp. komandytowa, by P. Kuźmiak, doradca podatkowy, assisted by M. Witkowiak, ekspert,

— the Polish Government, by A. Kramarczyk, M. Szpunar and B. Majczyna, acting as Agents,

— the German Government, by J. Möller and C. Blaschke, acting as Agents,

— the Greek Government, by Z. Chatzipavlou, G. Papagianni, and G. Kanellopoulos, acting as Agents,

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

— the European Commission, by K. Herrmann and D. Triantafyllou, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 January 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 52(a) and 56(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The reference has been made in proceedings between Inter-Mark Group sp. z o.o. sp. komandytowa ('Inter-Mark'), a company incorporated under Polish law and subject to value added tax ('VAT') in Poland, and the Dyrektor Izby Skarbowej w Poznaniu (Director of the Poznan Tax Chamber; 'the Dyrektor'), acting on behalf of the Minister Finansów (Minister for Finance), regarding the determination, for VAT purposes, of the place where a supply of services is deemed to have been made.

Legal context

European Union legislation

3 Article 45 of Directive 2006/112 provides:

'The place of supply of services connected with immovable property, including the services of estate agents and experts, and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the property is located.'

4 Article 52(a) of that directive provides:

'The place of supply of the following services shall be the place where the services are physically carried out:

(a) cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organisers of such activities and, where appropriate, ancillary services.'

5 Under Article 56(1)(b) and (g) of that directive:

'1. The place of supply of the following services to customers established outside the Community, or to taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment for which the service is supplied, or, in the absence of such a place, the place where he has his permanent address or usually resides:

...

(b) advertising services;

...

(g) the hiring out of movable tangible property, with the exception of all means of transport;

...'

National legislation

6 Article 27(2)(3)(a) of the Law of 11 March 2004 on value added tax (Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług, Dz. U. nº 54, position 535; 'the VAT Law'), in the version applicable to the main proceedings, provides:

'In the case of the supply of services in the cultural, artistic, sporting, scientific, educational and entertainment fields and similar services, such as fairs and exhibitions, and of services ancillary thereto, the place where the services are supplied shall … be the place where the services are physically carried out.'

7 Article 27(3) of the VAT Law states as follows:

'Where the services specified in Paragraph 4 are provided to:

(1) natural persons, legal persons or organisational entities without legal personality, which have their place of establishment or residence within the territory of a non-member country, or to

(2) taxable persons having their place of establishment or residence within the Community but not in the same country as the supplier,

the place where the services are supplied shall be the place where the recipient of the service has established its business, has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where it has its permanent address or normal residence.'

8 In accordance with Article 27(4)(2) of the VAT Law, paragraph 3 applies to, inter alia, advertising services.

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

9 On 11 February 2009, Inter-Mark requested from the Dyrektor a written interpretation of the provisions of the VAT Law concerning the determination of the place at which services relating to the hiring-out of stands for fairs and exhibitions are supplied and the determination of that place in the case where those services are supplied by a subcontractor. It is apparent from the referring court's decision that the issue relating to subcontracting is irrelevant in the context of the present reference.

10 In its request, Inter-Mark described the activity which it proposed to carry out as consisting of the temporary provision of fair and exhibition stands to clients presenting their goods or services during such events. That provision is, in general, preceded by the drawing-up and visualisation of a design. Where necessary, the supply of services also includes transportation of components of the stand and its assembly at the place where the fair or exhibition is being organised. The services relating to the hiring-out of stands are supplied mainly to foreign contracting parties having their place of establishment or residence within the territory of European-Union Member States or within the territory of non-member countries. Inter-Mark does not, however, rule out the possibility that its services may also be supplied to national entities. The stands in question have to be provided to hiring clients both within the territory

of Poland and the Member States of the European Union and within the territory of non-member countries. At the end of the contract, the clients who have hired stands must return them to Inter-Mark.

11 According to Inter-Mark, the fees for the provision of those stands are added to the fees which exhibitors must pay to the organiser of the event concerned for the purpose of taking part in that event. Those fees cover, inter alia, utility, fair-infrastructure and media-service costs. By contrast, each exhibitor is individually responsible for fitting out and constructing its own stand and, to that end, has recourse to the services of Inter-Mark. The admission fees charged to visitors at certain fairs and exhibitions accrue exclusively to the organisers of those events.

12 In its request, Inter-Mark stated that it takes the view that the services which it supplies are thus advertising services within the meaning of Directive 2006/112. Alternatively, it submits that the services in question may be classified as rental or hire services or other services of a similar nature concerning movable tangible property, with the exception of means of transport.

13 On 4 May 2009, the Dyrektor, acting on behalf of the Minister Finansów, gave an individual interpretation in which he expressed the view that services such as those at issue in the main proceedings were, in accordance with Article 27(2)(3)(a) of the VAT Law, to be regarded as being supplied in the place where they were physically carried out. In support of his interpretation, the Dyrektor stated that advertising is a form of persuasive communication using techniques and actions to draw attention to a product, service or idea. However, the activities carried on by Inter-Mark did not, in his view, constitute such a form of communication but were rather supplies of services which were ancillary to the organisation of fairs and exhibitions.

14 Inter-Mark brought an action contesting that individual interpretation before the referring court. Inter-Mark claims, in support of its action, that the interpretation upheld by the Dyrektor is contrary to, inter alia, Articles 52(a) and 56(1)(b) and/or (g) of Directive 2006/112, and at variance with the Court's case-law, as evidenced by the judgments in Case C-68/92 *Commission* v *France* [1993] ECR I-5881, Case C-69/92 *Commission* v *Luxembourg* [1993] ECR I-5907 and Case C-73/92 *Commission* v *Spain* [1993] ECR I-5997, as well as by those in Case C-327/94 *Dudda* [1996] ECR I-4595, Case C-438/01 *Design Concept* [2003] ECR I-5617 and Case C-114/05 *Gillan Beach* [2006] ECR I-2427 concerning 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').

15 In those circumstances, the Wojewódzki Sąd Administracyjny w Poznaniu (Regional Administrative Court, Poznan) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'(a) Are the provisions of Article 52(a) of … Directive [2006/112] … to be interpreted as meaning that services consisting in the temporary provision of exhibition and fair stands to clients presenting their goods and services at fairs and exhibitions must be classified as services ancillary to fair and exhibition services referred to in those provisions, that is to say, services similar to cultural, artistic, sporting, scientific, educational and entertainment activities, which are taxed at the place where they are physically carried out,

(b) or should it be accepted that they are advertising services taxed at the place where the customer has established his business on a permanent basis or has a fixed establishment for which the service is supplied, or, in the absence of such a place, the place where he has his permanent address or usually resides, in accordance with Article 56(1)(b) of Directive 2006/112,

on the basis that those services concern the temporary provision of stands to clients presenting their goods and services at fairs and exhibitions which is normally preceded by the drawing-up of a design and visualisation of the stand and, possibly, transportation of parts of the stand and its assembly at the place where the fair or exhibition is organised, and the service supplier's clients exhibiting their goods or services pay separately to the organiser of the relevant event fees for the very possibility of participating in the fair or exhibition which cover utility, fair-infrastructure and media-service costs and so forth,

each exhibitor being separately responsible for fitting out and constructing his own stand and in that respect using the services at issue which require interpretation,

and organisers charging visitors individually fees for entrance to their fair or exhibition which accrue to the organiser of the event and not to the supplier of the service?'

Consideration of the question referred

16 By its question, the referring court asks, in essence, whether Directive 2006/112 must be interpreted as meaning that a supply of services consisting of the design, temporary provision and, where necessary, the transportation and assembly of exhibition stands for clients who exhibit their goods and services at fairs and exhibitions must be

regarded as constituting a supply of services which is ancillary to the organisation of an activity covered by Article 52(a) of Directive 2006/112 or as constituting a supply of advertising services covered by Article 56(1)(b) of that directive.

17 In order to provide a useful answer to the referring court, it is first necessary to examine whether, as claimed by Inter-Mark and the Commission, a supply of services such as that referred to in the question submitted for a preliminary ruling is liable to come within the scope of Article 56(1)(b) of Directive 2006/112.

18 In this respect, it should be noted that the Court has held that it is sufficient that a promotional activity involves the dissemination of a message intended to inform the public of the existence or the qualities of the product or service with a view to increasing the sales of that product or service for that activity to be characterised as an advertising service within the meaning of Article 9(2)(e) of the Sixth Directive, the wording of which is identical to that of Article 56(1)(b) of Directive 2006/112 (see, to that effect, *Commission* v *France*, paragraph 18).

19 The same applies to any activity which forms an inseparable part of an advertising campaign and which thereby contributes to conveying the advertising message. This is the case with regard to the production of aids used for a particular advertisement (see *Commission* v *France*, paragraph 19).

20 It follows that the supply of services consisting of the design and temporary provision of a fair or exhibition stand must be considered to be a supply of an advertising service, within the meaning of Article 56(1)(b) of Directive 2006/112, in the case where that stand is used for the dissemination of a message intended to inform the public of the existence or the qualities of the product or service offered by the hirer with a view to increasing the sales of that product or service or where it forms an inseparable part of an advertising campaign and contributes to conveying the advertising

message. This will be the case, in particular, where the stand constitutes an aid for the dissemination of a message informing the public of the existence or the qualities of the products or is used for the organisation of promotional events.

21 By contrast, where the stand does not fulfil those conditions, a supply of services such as that in issue in the main proceedings cannot be characterised as a supply of advertising services, within the meaning of Article 56(1)(b) of Directive 2006/112.

22 Further, in so far as, in such a case, the supply of services envisaged does not come within the scope of Article 56(1)(b) of Directive 2006/112, it will be necessary to establish whether that supply is liable to come within the scope of Article 52(a) of that directive.

23 In that regard, it should be noted that, in respect of the supply of services which may be characterised as ancillary to an activity similar to the supply of services referred to in Article 52(a) of Directive 2006/112, of which the activities carried out by an organiser of fairs and exhibitions form part, the Court has held that the various categories of supplies of services set out in Article 9(2)(c) of the Sixth Directive, the wording of which corresponds to that of Article 52(a) of Directive 2006/112, have, in particular, 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 (*Gillan Beach*, paragraph 24).

24 It follows that a supply of services such as that referred to in the question submitted for a preliminary ruling can be characterised as a supply of ancillary services, within the meaning of Article 52(a) of Directive 2006/112, when it relates to the design and

the temporary provision of a stand for a specific fair or exhibition on a cultural, artistic, sporting, scientific, educational, entertainment or similar theme or a stand corresponding to a model in respect of which the organiser of a specific fair or exhibition has prescribed the form, size, material composition or visual appearance.

25 As all the parties concerned which have submitted observations to the Court agree, in such a case the design and the temporary provision of a stand used for purposes of a specific fair or exhibition must be regarded as constituting a supply of services which is ancillary to the activity carried on by the organiser of that fair or exhibition, coming within the scope of Article 52(a) of Directive 2006/112.

26 It is necessary in this regard that the stand should be provided for a fair or an exhibition which takes place, whether on one occasion or repeatedly, in a specific location. As Article 52(a) of Directive 2006/112 requires the charging of VAT at the place where the service is physically carried out, the application of that provision to the supply of a stand which is used at a multitude of fairs or exhibitions taking place in several Member States would risk being excessively complex and would thus jeopardise the reliable and correct charging of VAT.

27 Finally, in the case where, in certain situations, the supply of services at issue in the main proceedings might not come within the scope of either Article 56(1(b) or Article 52(a) of Directive 2006/112, it is necessary, in order to provide a useful answer to the referring court, to establish which other provision of that directive might cover that supply.

28 In that regard, it should be noted that, in the light of the characteristics of that supply of services, the temporary provision, for payment, of the constituent material

elements of the stand must, in those circumstances, be regarded as constituting the determining element of that supply. In such a situation, that supply must be classified as the hiring out of movable tangible property, within the meaning of Article 56(1)(g) of Directive 2006/112. As follows from paragraph 26 of the present judgment, this is particularly the case when that stand is used at several fairs or exhibitions taking place in different Member States.

29 It should be added that, in any event and regardless of the situation envisaged, a supply of services such as that at issue in the main proceedings cannot, contrary to the German Government's submission, be regarded as constituting a supply of services connected with immovable property, within the meaning of Article 45 of Directive 2006/112.

30 It follows from the Court's case-law that only supplies of services which have a sufficiently direct connection with immovable property can be covered by Article 45 of Directive 2006/112 (see, by analogy, Case C-166/05 *Heger* [2006] ECR I-7749, paragraph 24, concerning the interpretation of Article 9(2)(a) of the Sixth Directive).

31 However, it must be held that, in the main proceedings in the present case, the supply of services envisaged has no direct connection with immovable property, the mere fact that a fair or exhibition stand must, on an ad-hoc and temporary basis, be installed on immovable property, or inside such property, being insufficient for that purpose.

32 It is for the national courts, which alone are competent to assess the facts, to establish, in the light of the specific circumstances of each case, the essential characteristics of the supply of services in question in order to classify it under Directive 2006/112.

33 Having regard to all of those considerations, the answer to the question referred is that Directive 2006/112 must be interpreted as meaning that a supply of services consisting of the design, temporary provision and, where necessary, the transportation and assembly of a fair or exhibition stand for clients presenting their goods or services at fairs and exhibitions is liable to come within the scope of:

— Article 56(1)(b) of that directive, in the case where that stand is designed or used for purposes of advertising;

— Article 52(a) of that directive, in the case where that stand is designed and provided for a specific fair or exhibition on a cultural, artistic, sporting, scientific, educational, entertainment or similar theme, or where that stand corresponds to a model in respect of which the organiser of a specific fair or exhibition has prescribed the form, size, material composition or visual appearance;

— Article 56(1)(g) of that directive, in the case where the temporary provision, for payment, of the constituent material elements of that stand constitutes a determining element of that supply.

Costs

34 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:

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a supply of services consisting of the design, temporary provision and, where necessary, the transportation and assembly of a fair or exhibition stand for clients presenting their goods or services at fairs and exhibitions is liable to come within the scope of:

— **Article 56(1)(b) of that directive, in the case where that stand is designed or used for purposes of advertising;**

— **Article 52(a) of that directive, in the case where that stand is designed and provided for a specific fair or exhibition on a cultural, artistic, sporting, scientific, educational, entertainment or similar theme, or where that stand corresponds to a model in respect of which the organiser of a specific fair or exhibition has prescribed the form, size, material composition or visual appearance;**

— **Article 56(1)(g) of that directive, in the case where the temporary provision, for payment, of the constituent material elements of that stand constitutes a determining element of that supply.**

[Signatures]