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Judgment of the Court (Fifth Chamber) of 8 July 1986. - Hans-Dieter and Ute Kerrutt v Finanzamt Mönchengladbach - Mitte. - Reference for a preliminary ruling: Finanzgericht Düsseldorf - Germany. - Turnover tax - 'Bauherrenmodell' (a co-proprietors' building scheme). - Case 73/85.

European Court reports 1986 Page 02219

Summary

Parties

Subject of the case

Grounds

Decision on costs

Operative part

Keywords

1 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAX - COMMON SYSTEM OF VALUE-ADDED TAX - EXEMPTIONS PROVIDED FOR BY THE SIXTH DIRECTIVE - EXEMPTION FOR THE SUPPLY OF BUILDINGS AND THE LAND ON WHICH THEY STAND - SERVICES PROVIDED IN CONNECTION THEREWITH - WHETHER TAXABLE

(COUNCIL DIRECTIVE NO 77/388 , ART . 2 (1) , ART . 13 B (G) AND ART . 28 (3) (B))

2 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAX - COMMON SYSTEM OF VALUE-ADDED TAX - IMPOSITION OF OTHER NATIONAL TAXES ON TRANSACTIONS ALREADY SUBJECT TO VAT - WHETHER PERMISSIBLE - CONDITIONS

(COUNCIL DIRECTIVE NO 77/388 , ART . 33)

Summary

1 . BY VIRTUE OF ARTICLE 2 (1) OF THE SIXTH COUNCIL DIRECTIVE (NO 77/388) ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES THE SUPPLY OF GOODS AND SERVICES UNDER A PARCEL OF CONTRACTS FOR WORK AND SERVICES IN CONNECTION WITH THE CONSTRUCTION OF A BUILDING , EXCEPT THE SUPPLY OF THE BUILDING LAND , ARE SUBJECT TO VALUE-ADDED TAX INASMUCH AS THEY DO NOT FALL WITHIN ONE OF THE EXEMPTIONS PROVIDED FOR BY THE DIRECTIVE IN RESPECT OF THE SUPPLY OF BUILDINGS AND OF THE LAND ON WHICH THEY STAND .

2 . NO PROVISION OF COMMUNITY LAW PROHIBITS A MEMBER STATE FROM LEVYING ON A TRANSACTION WHICH IS SUBJECT TO VALUE-ADDED TAX UNDER DIRECTIVE NO 77/388 OTHER TAXES ON TRANSFERS AND TRANSACTIONS , PROVIDED THAT SUCH TAXES CANNOT BE CHARACTERIZED AS TURNOVER TAXES .

Parties

IN CASE 73/85

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE FINANZGERICHT (FINANCE COURT) DUSSELDORF FOR A PRELIMINARY RULING IN THE PROCEEDINGS PENDING BEFORE THAT COURT BETWEEN

HANS-DIETER AND UTE KERRUTT , MARKGRONINGEN ,

AND

FINANZAMT (TAX OFFICE) MONCHENGLADBACH-MITTE

Subject of the case

ON THE INTERPRETATION OF VARIOUS PROVISIONS OF THE SIXTH COUNCIL DIRECTIVE , NO 77/388/EEC OF 17 MAY 1977 , ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT (OFFICIAL JOURNAL 1977 , L 145 , P . 1) ,

Grounds

1 BY AN ORDER OF 17 DECEMBER 1984 , WHICH WAS RECEIVED AT THE COURT ON 19 MARCH 1985 , THE FINANZGERICHT (FINANCE COURT) DUSSELDORF REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY TWO QUESTIONS CONCERNING THE INTERPRETATION OF VARIOUS PROVISIONS OF THE SIXTH COUNCIL DIRECTIVE (NO 77/388/EEC OF 17 MAY 1977) , ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT (OFFICIAL JOURNAL 1977 , L 145 , P . 1) .

2 THE QUESTIONS WERE RAISED IN PROCEEDINGS BETWEEN HANS-DIETER AND UTE KERRUTT , A MARRIED COUPLE , AND THE FINANZAMT (TAX OFFICE) MONCHENGLADBACH-MITTE . THE DISPUTE CONCERNS TAX DEMANDS ISSUED TO THE PLAINTIFFS IN THE MAIN PROCEEDINGS FOR REAL PROPERTY TRANSFER TAX ON A

BUILDING TRANSACTION KNOWN AS THE 'BAUHERRENMODELL' (A CO-PROPRIETORS' BUILDING SCHEME).

3 IT APPEARS FROM THE ORDER REQUESTING A PRELIMINARY RULING AND THE EXPLANATIONS PROVIDED IN THE COURSE OF THE PROCEEDINGS THAT THE TRANSACTION IN QUESTION OPERATED AS FOLLOWS: THE KERRUTTS AND OTHER PERSONS DESIROUS OF BUILDING A HOME COMMISSIONED A FIRM OF TRUSTEES TO PURCHASE ON THEIR BEHALF BUILDING LAND AND TO CONSTRUCT ON IT A RESIDENTIAL BUILDING. BY VIRTUE OF THAT CONTRACT, THEY ACQUIRED A CO-PROPRIETOR'S SHARE OF A PLOT OF LAND WHICH HAD NOT BEEN BUILT ON. THE DIVISION OF PROPERTY PROVIDED FOR IN THE WOHNUNGSEIGENTUMSGESETZ (LAW ON THE OWNERSHIP OF APARTMENTS) WAS LAWFULLY COMPLETED AND REGISTERED IN THE LAND REGISTER. IN ADDITION, ALL THE CO-PROPRIETORS, GROUPED TOGETHER IN A BAUHERRENGEMEINSCHAFT (AN ASSOCIATION GOVERNED BY THE CIVIL CODE) CONCLUDED A CONTRACT WITH A CONSTRUCTION COMPANY FOR THE CONSTRUCTION OF THE BUILDING. THE KERRUTTS ALSO CONCLUDED ON THEIR OWN ACCOUNT A CERTAIN NUMBER OF CONTRACTS, NAMELY A CONTRACT FOR THE SUPERVISION OF BUILDING WORKS, A CONTRACT FOR THE MANAGEMENT OF LET ACCOMMODATION, A CONTRACT FOR THE ASSEMBLY OF DOCUMENTATION FOR TAX PURPOSES, A CONTRACT OF GUARANTEE AND A CONTRACT FOR THE PROCUREMENT OF FINANCE.

4 THE PLAINTIFFS IN THE MAIN PROCEEDINGS CONTEST THE TAX DEMANDS IN SO FAR AS THE TRANSFER TAX WAS CALCULATED ON THE BASIS OF THE CONSIDERATION FOR ALL THE VARIOUS TRANSACTIONS, IN ACCORDANCE WITH CERTAIN RECENT DECISIONS OF THE BUNDESFINANZHOF. ACCORDING TO THOSE DECISIONS, THE CONTRACT FOR THE SALE OF THE LAND AND THE CONTRACT FOR THE CONSTRUCTION OF THE BUILDING MUST BE REGARDED AS A SINGLE TRANSACTION WITHIN THE MEANING OF THE LAW ON TRANSFER TAX IF EACH OF THE TWO PARTIAL CONTRACTS IS DEVOID OF PURPOSE WITHOUT THE OTHER. THAT VIEW IS DISPUTED BY THE PLAINTIFFS IN THE MAIN PROCEEDINGS WHO CLAIM, ON THE CONTRARY, THAT ONLY THE PURCHASE OF THE LAND, AND THEREFORE NOT THE CONSTRUCTION OF THE BUILDING, IS LIABLE TO TRANSFER TAX.

5 THE NATIONAL COURT TAKES THE VIEW THAT THE DISPUTE TURNS UPON THE INTERPRETATION OF VARIOUS PROVISIONS OF THE SIXTH DIRECTIVE (NO 77/388/EEC), CITED ABOVE. BY VIRTUE OF A PROVISION OF NATIONAL LAW, PARAGRAPH 4 (9) (A) OF THE UMSATZSTEUERGESETZ (LAW ON TURNOVER TAX), TRANSACTIONS SUBJECT TO THE GRUNDERWERBSTEUERGESETZ (LAW ON REAL PROPERTY TRANSFER TAX) ARE EXEMPT FROM TURNOVER TAX. IT FOLLOWS THAT IF TRANSFER TAX IS CHARGED ON ALL THE TRANSACTIONS, IN OTHER WORDS ON THE PURCHASE OF THE LAND AND THE CONSTRUCTION OF THE BUILDING, TURNOVER TAX CANNOT BE LEVIED ON THE SUPPLIES OF GOODS AND SERVICES OF BUILDING CONTRACTORS, BUILDING WORKERS AND THE TRUSTEES, WHICH COULD BE CONTRARY TO THE OBLIGATIONS ARISING UNDER THE SIXTH DIRECTIVE.

6 IT IS IN THOSE CIRCUMSTANCES THAT THE FINANZGERICHT DUSSELDORF STAYED THE PROCEEDINGS AND REFERRED TO THE COURT FOR A PRELIMINARY RULING ON THE FOLLOWING QUESTIONS:

'(1) DOES THE SUPPLY OF GOODS AND SERVICES UNDER A PARCEL OF CONTRACTS OFFERED BY A PROMOTER FOR WORK AND SERVICES IN CONNECTION WITH THE CONSTRUCTION OF A BUILDING, INCLUDING A CONTRACT TO PURCHASE LAND (THE 'BAUHERRENMODELL', OR CO-PROPRIETORS' SCHEME) TOGETHER WITH A

TRANSFER OF LAND EFFECTED BY ANOTHER UNDERTAKING , CONSTITUTE A SINGLE ' ' SUPPLY OF BUILDINGS OR PARTS THEREOF , AND OF THE LAND ON WHICH THEY STAND ' ' FOR THE PURPOSES OF ARTICLE 13 B (G) AND ARTICLE 28 (3) (B) IN CONJUNCTION WITH POINT 16 OF ANNEX F TO THE SIXTH COUNCIL DIRECTIVE ON THE HARMONIZATION OF TURNOVER TAXES (DIRECTIVE NO 77/388/EEC OF 17 MAY 1977), OR IS VALUE-ADDED TAX APPLICABLE UNDER ARTICLE 2 (1) OF THAT DIRECTIVE TO THE SUPPLY OF SUCH GOODS AND SERVICES BUT NOT TO THE TRANSFER OF THE LAND?

(2) IF VALUE-ADDED TAX IS CHARGEABLE UNDER ARTICLE 2 (1) OF THE SIXTH DIRECTIVE ,

DOES COMMUNITY LAW PROHIBIT DOUBLE TAXATION SO THAT NO ADDITIONAL TRANSFER TAX (IN THIS CASE THE GERMAN TAX ON THE TRANSFER OF REAL PROPERTY) MAY BE LEVIED IN RESPECT OF THE AFOREMENTIONED SUPPLY OF GOODS AND SERVICES?

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THE FIRST QUESTION

7 BY THE FIRST QUESTION THE NATIONAL COURT SEEKS ESSENTIALLY TO ESTABLISH WHETHER SUPPLIES OF GOODS AND SERVICES , OTHER THAN THE SUPPLY OF THE BUILDING LAND , UNDER A PARCEL OF CONTRACTS FOR WORK AND SERVICES IN CONNECTION WITH THE CONSTRUCTION OF A BUILDING (THE ' BAUHERRENMODELL ') ARE SUBJECT TO VAT BY VIRTUE OF ARTICLE 2 (1) OF THE SIXTH DIRECTIVE , OR WHETHER THEY QUALIFY FOR THE EXEMPTIONS IN RESPECT OF THE ' SUPPLY OF BUILDINGS OR PARTS THEREOF AND THE LAND ON WHICH THEY STAND ' PROVIDED FOR IN ARTICLE 13 B (G) AND ARTICLE 28 (3) (B) IN CONJUNCTION WITH POINT 16 OF ANNEX F TO THE SIXTH DIRECTIVE .

8 THE PLAINTIFFS IN THE MAIN PROCEEDINGS SUBMIT , WITH REGARD TO THE FIRST QUESTION , THAT THE SUPPLIES OF GOODS AND SERVICES DESCRIBED IN THE QUESTION SUBMITTED BY THE NATIONAL COURT ARE SUBJECT TO VAT BY VIRTUE OF THE SIXTH DIRECTIVE . ON THE OTHER HAND THEY CONSIDER THAT THE LAND TRANSACTION IS EXEMPT FROM THAT TAX BOTH UNDER THE SIXTH DIRECTIVE , WHICH IS INTENDED TO HARMONIZE EXEMPTIONS , AND UNDER A PROVISION OF NATIONAL LAW PROHIBITING THE DOUBLE TAXATION OF THE SAME TRANSACTION BY THE IMPOSITION OF TRANSFER TAX AND VALUE-ADDED TAX .

9 THE FEDERAL GOVERNMENT AND THE COMMISSION BOTH TAKE THE VIEW THAT SUPPLIES OF GOODS AND SERVICES OF THE KIND IN QUESTION ARE SUBJECT AS SUCH TO VAT IN ACCORDANCE WITH ARTICLE 2 (1) OF THE SIXTH DIRECTIVE AND CANNOT BE REGARDED AS FORMING PART OF A ' SUPPLY OF BUILDINGS OR PARTS THEREOF , AND THE LAND ON WHICH THEY STAND ' FOR THE PURPOSES OF ARTICLE 13 B (G) AND ARTICLE 28 (3) (B) IN CONJUNCTION WITH POINT 16 OF ANNEX F TO THE SIXTH DIRECTIVE . MOREOVER , ARTICLE 13 B (G) DOES NOT APPLY TO SUPPLIES OF BUILDINGS AND THE LAND ON WHICH THEY STAND BEFORE FIRST OCCUPATION , IN OTHER WORDS NEW CONSTRUCTIONS SUCH AS THOSE BUILT UNDER THE ' BAUHERRENMODELL ' . THE COMMISSION NOTES IN ADDITION THAT THE TRANSITIONAL PROVISION IN ARTICLE 28 (3) PRECLUDES ANY EXTENSION OF THE NATIONAL PRACTICE REGARDING EXEMPTION DECIDED UNILATERALLY BY THE MEMBER STATES AFTER THE DATE OF THE ADOPTION OF THE DIRECTIVE .

10 IT IS COMMON GROUND THAT SUPPLIES OF GOODS AND SERVICES UNDER A SCHEME SUCH AS THE BAUHERRENMODELL FALL WITHIN THE SCOPE OF ARTICLE 2 (1) OF THE DIRECTIVE AS DETERMINED BY THE DEFINITIONS OF THE EXPRESSIONS ' TAXABLE PERSONS ' AND ' TAXABLE TRANSACTIONS ' CONTAINED IN ARTICLES 4 , 5 AND 6 OF THE DIRECTIVE . CONSEQUENTLY , THEY ARE SUBJECT TO VAT BY VIRTUE OF ARTICLE 2 (1) UNLESS THEY QUALIFY FOR ONE OF THE EXEMPTIONS PROVIDED FOR IN THE DIRECTIVE . IN THIS CASE IT IS NECESSARY TO CONSIDER WHETHER THE EXEMPTIONS LAID DOWN IN ARTICLE 13 B (G) OR ARTICLE 28 (3) (B) IN CONJUNCTION WITH POINT 16 OF ANNEX F TO THE DIRECTIVE APPLY .

11 ACCORDING TO ARTICLE 13 B (G) OF THE DIRECTIVE MEMBER STATES MUST EXEMPT UNDER CERTAIN CONDITIONS WHICH THEY ARE TO LAY DOWN ' THE SUPPLY OF BUILDINGS OR PARTS THEREOF , AND OF THE LAND ON WHICH THEY STAND , OTHER THAN AS DESCRIBED IN ARTICLE 4 (3) (A) ' ; ARTICLE 4 (3) (A) REFERS TO SUPPLIES EFFECTED BEFORE FIRST OCCUPATION . UNDER ARTICLE 28 (3) (B) MEMBER STATES MAY ' CONTINUE TO EXEMPT THE ACTIVITIES SET OUT IN ANNEX F UNDER CONDITIONS EXISTING IN THE MEMBER STATE CONCERNED ' . POINT 16 OF ANNEX F REFERS TO ' SUPPLIES OF THOSE BUILDINGS AND LAND DESCRIBED IN ARTICLE 4 (3) ' .

12 IT MUST BE NOTED IN THE FIRST PLACE THAT BOTH THE PROVISIONS PROVIDING FOR EXEMPTIONS USE THE SAME EXPRESSION , NAMELY ' THE SUPPLY OF BUILDINGS OR PARTS THEREOF AND THE LAND ON WHICH THEY STAND ' . THEIR APPLICABILITY IN A CASE SUCH AS THAT WHICH IS THE SUBJECT OF THE MAIN PROCEEDINGS THEREFORE DEPENDS ON WHETHER THE SUPPLIES OF GOODS AND SERVICES IN QUESTION FOR THE CONSTRUCTION OF A BUILDING , TOGETHER WITH THE LAND TRANSACTION , CONSTITUTE A SINGLE PROPERTY TRANSACTION WHICH MAY BE REGARDED AS FALLING WITHIN THE SCOPE OF THE EXPRESSION ' SUPPLY OF BUILDINGS . . . AND THE LAND ON WHICH THEY STAND ' BECAUSE OF THE ECONOMIC CONNECTION BETWEEN THE PARTIAL TRANSACTIONS CONCERNED AND THEIR COMMON AIM , WHICH IS THE CONSTRUCTION OF THE BUILDING ON THE LAND PURCHASED .

13 IT IS CLEAR FROM THE WORDS ' SUPPLY OF BUILDINGS . . . AND THE LAND ON WHICH THEY STAND ' THAT SUCH A SINGLE TRANSACTION CAN BE SAID TO HAVE TAKEN PLACE ONLY WHERE THE TWO CATEGORIES OF GOODS SUPPLIED , NAMELY THE BUILDING AND THE LAND , ARE , FOR THE PURPOSES OF THE LAW GOVERNING THE SALE OF PROPERTY , THE SUBJECT OF A SINGLE DELIVERY INASMUCH AS THE DELIVERY IS OF LAND WHICH HAS BEEN BUILT ON .

14 THAT VIEW CORRESPONDS TO THE AIM OF THE SIXTH DIRECTIVE . AS THE FEDERAL GOVERNMENT STRESSED , IN ORDER TO RENDER TAX NON-DISCRIMINATORY FROM THE POINT OF VIEW OF COMPETITION , THE DIRECTIVE IS INTENDED TO MAKE SEPARATE TAXABLE TRANSACTIONS WHICH CANNOT BE GROUPED TOGETHER IN A SINGLE TRANSACTION INDIVIDUALLY LIABLE TO VAT .

15 THOSE CONSIDERATIONS LEAD TO THE CONCLUSION THAT IN THIS CASE SUPPLIES OF GOODS AND THE SERVICES OF CONTRACTORS AND BUILDING WORKERS UNDER A SCHEME SUCH AS THE 'BAUHERRENMODELL', WHICH ARE TRANSACTIONS LEGALLY SEPARATE FROM THE LAND TRANSACTION WHICH WAS COMPLETED WITH ANOTHER CONTRACTOR, CANNOT BE REGARDED AS FORMING, TOGETHER WITH THAT TRANSACTION, A UNITY CAPABLE OF BEING CLASSIFIED AS A SINGLE 'SUPPLY OF BUILDINGS OR PARTS OF BUILDINGS AND THE LAND ON WHICH THEY STAND'.

16 IT MUST BE ADDED THAT AS REGARDS IN THE FIRST PLACE THE EXEMPTION PROVIDED FOR IN ARTICLE 13 B (G), THAT ARTICLE, IN CONJUNCTION WITH ARTICLE 4 (3) (A), TO WHICH IT REFERS, MAKES THE EXEMPTION OF THE SUPPLY OF BUILDINGS AND THE LAND ON WHICH THEY STAND SUBJECT TO THE CONDITION THAT THE SUPPLY IS NOT EFFECTED BEFORE FIRST OCCUPATION; IN OTHER WORDS IT DOES NOT APPLY TO NEW BUILDINGS. IT FOLLOWS THAT AN EXEMPTION UNDER THAT PROVISION IS PRECLUDED IN THIS CASE SINCE A SCHEME SUCH AS THE 'BAUHERRENMODELL' CATERES BY DEFINITION FOR THE CONSTRUCTION OF NEW BUILDINGS.

17 SECONDLY, WITH REGARD TO THE POSSIBILITY OF EXEMPTION UNDER ARTICLE 28 (3) (B) IN CONJUNCTION WITH POINT 16 OF ANNEX F IT MUST BE CONCEDED THAT UNDER THAT TRANSITIONAL PROVISION MEMBER STATES MAY 'CONTINUE TO EXEMPT' NEW CONSTRUCTIONS 'UNDER CONDITIONS EXISTING IN THE MEMBER STATE CONCERNED'. HOWEVER, ITS WORDING PRECLUDES THE INTRODUCTION OF NEW EXEMPTIONS OR THE EXTENSION OF THE SCOPE OF EXISTING EXEMPTIONS AFTER THE DATE OF THE ENTRY INTO FORCE OF THE DIRECTIVE. A POSSIBLE EXTENSION OF TRANSFER TAX AFTER THE IMPLEMENTATION OF THE DIRECTIVE, EVEN IF DERIVED FROM THE DECISIONS OF THE COURTS, CANNOT THEREFORE AFFECT THE SCOPE OF THE EXEMPTION FROM TURNOVER TAX.

18 FOR ALL THOSE REASONS THE REPLY TO THE FIRST QUESTION MUST BE THAT UNDER A SCHEME SUCH AS THE 'BAUHERRENMODELL' REFERRED TO IN THE ORDER REQUESTING A PRELIMINARY RULING THE SUPPLY OF GOODS AND SERVICES UNDER A PARCEL OF CONTRACTS FOR WORK AND SERVICES IN CONNECTION WITH THE CONSTRUCTION OF A BUILDING, EXCEPT THE SUPPLY OF THE BUILDING LAND, ARE SUBJECT TO VALUE-ADDED TAX BY VIRTUE OF ARTICLE 2 (1) OF THE SIXTH COUNCIL DIRECTIVE (NO 77/388/EEC OF 17 MAY 1977).

THE SECOND QUESTION

19 BY THE SECOND QUESTION THE NATIONAL COURT SEEKS ESSENTIALLY TO ESTABLISH WHETHER COMMUNITY LAW PRECLUDES A MEMBER STATE FROM LEVYING ON A TRANSACTION ALREADY SUBJECT TO VAT OTHER TAXES ON TRANSFERS AND TRANSACTIONS, SUCH AS, FOR EXAMPLE, THE GERMAN 'GRUNDERWERBSTEUER'.

20 THE PLAINTIFFS IN THE MAIN PROCEEDINGS SUBMIT IN THAT RESPECT THAT THE SIXTH DIRECTIVE, WHICH IS INTENDED TO HARMONIZE, INTER ALIA, EXEMPTIONS FROM VAT, WOULD BE DEPRIVED OF ITS USEFUL EFFECT IF A SINGLE PROPERTY TRANSACTION COULD BE TAXED TWICE AS A RESULT OF THE APPLICATION OF BOTH VAT AND TRANSFER TAX.

21 ON THE OTHER HAND, THE FEDERAL GOVERNMENT AND THE COMMISSION CONSIDER THAT THE REPLY IS TO BE FOUND IN ARTICLE 33 OF THE SIXTH DIRECTIVE WHICH EXPRESSLY AUTHORIZES THE MAINTENANCE OR INTRODUCTION BY THE MEMBER STATES OF ANY TAXES WHICH CANNOT BE CHARACTERIZED AS TURNOVER TAXES, AND IN PARTICULAR 'STAMP DUTY'. THE FEDERAL GOVERNMENT STATES IN

ADDITION THAT ALTHOUGH BY MEANS OF THE EXEMPTIONS WHICH IT LAYS DOWN THE DIRECTIVE IN PART EXCLUDES THE DOUBLE TAXATION OF CERTAIN TRANSACTIONS , IT ALLOWS SUCH DOUBLE TAXATION FOR OTHER TRANSACTIONS .

22 THE ARGUMENT PUT FORWARD BY THE FEDERAL GOVERNMENT AND THE COMMISSION MUST BE ACCEPTED . ARTICLE 33 OF THE SIXTH DIRECTIVE STATES CLEARLY THAT ' WITHOUT PREJUDICE TO OTHER COMMUNITY PROVISIONS , THE PROVISIONS OF THIS DIRECTIVE SHALL NOT PREVENT A MEMBER STATE FROM MAINTAINING OR INTRODUCING . . . STAMP DUTIES AND , MORE GENERALLY , ANY TAXES , DUTIES OR CHARGES WHICH CANNOT BE CHARACTERIZED AS TURNOVER TAXES ' . SINCE COMMUNITY LAW AS IT NOW STANDS DOES NOT CONTAIN ANY SPECIFIC PROVISION EXCLUDING OR LIMITING THE POWER OF MEMBER STATES TO INTRODUCE TAXES ON TRANSFERS AND TRANSACTIONS OTHER THAN TURNOVER TAXES , AND THUS PERMITS CONCURRENT SYSTEMS OF TAXATION , IT MUST BE CONCLUDED THAT SUCH TAXES MAY BE LEVIED EVEN WHERE , AS IN THIS CASE , CHARGING THEM ON A TRANSACTION WHICH IS ALREADY SUBJECT TO VAT MAY RESULT IN THE DOUBLE TAXATION OF THAT TRANSACTION .

23 IN REPLY TO THE SECOND QUESTION IT MUST THEREFORE BE STATED THAT NO PROVISION OF COMMUNITY LAW PROHIBITS A MEMBER STATE FROM LEVYING ON A TRANSACTION WHICH IS SUBJECT TO VALUE-ADDED TAX UNDER THE SIXTH DIRECTIVE OTHER TAXES ON TRANSFERS AND TRANSACTIONS , SUCH AS THE GERMAN ' GRUNDERWERBSTEUER ' , PROVIDED THAT SUCH TAXES CANNOT BE CHARACTERIZED AS TURNOVER TAXES .

Decision on costs

COSTS

24 THE COSTS INCURRED BY THE GERMAN GOVERNMENT AND THE COMMISSION , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . SINCE THE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS ARE CONCERNED , IN THE NATURE OF A STEP IN THE PROCEEDINGS PENDING BEFORE THE NATIONAL COURT , THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS ,

THE COURT (FIFTH CHAMBER)

IN REPLY TO THE QUESTIONS REFERRED TO IT BY THE FINANZGERICHT DUSSELDORF BY AN ORDER OF 17 DECEMBER 1984 , HEREBY RULES :

(1) UNDER A SCHEME SUCH AS THE ' BAUHERRENMODELL ' REFERRED TO IN THE ORDER REQUESTING A PRELIMINARY RULING THE SUPPLY OF GOODS AND SERVICES UNDER A PARCEL OF CONTRACTS FOR WORK AND SERVICES IN CONNECTION WITH THE CONSTRUCTION OF A BUILDING , EXCEPT THE SUPPLY OF THE BUILDING LAND , ARE SUBJECT TO VALUE-ADDED TAX BY VIRTUE OF ARTICLE 2 (1) OF THE SIXTH COUNCIL DIRECTIVE (NO 77/388/EEC OF 17 MAY 1977).

(2) NO PROVISION OF COMMUNITY LAW PROHIBITS A MEMBER STATE FROM LEVYING ON A TRANSACTION WHICH IS SUBJECT TO VALUE-ADDED TAX UNDER THE SIXTH DIRECTIVE OTHER TAXES ON TRANSFERS AND TRANSACTIONS , SUCH AS THE GERMAN ' GRUNDERWERBSTEUER ' , PROVIDED THAT SUCH TAXES CANNOT BE CHARACTERIZED AS TURNOVER TAXES .