

## 61987J0207

Judgment of the Court (Sixth Chamber) of 14 July 1988. - Gerd Weissgerber v Finanzamt Neustadt/Weinstraße. - Reference for a preliminary ruling: Finanzgericht Rheinland-Pfalz - Germany. - Effect of directives - Exemption from VAT - Passing on of VAT. - Case 207/87.

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## Keywords

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*Tax provisions - Harmonization of laws - Turnover tax - Common system of value-added tax - Exemptions provided for by the Sixth Directive - Exemption for transactions consisting of the negotiation of credit - Possibility for individuals to rely upon the relevant provision in the absence of implementation of the directive - Conditions - Period concerned*

*( Council Directives 77/388/EEC, Art . 13 B ( d ) ( 1 ), and 78/583/EEC, Art . 1 )*

## Summary

*In the absence of implementation of the Sixth Council Directive ( 77/388/EEC ) on the harmonization of the laws of the Member States relating to turnover taxes, a credit negotiator may rely on the tax exemption provision contained in Article 13 B ( d ) ( 1 ) of the directive in respect of transactions carried out between 1 January 1978 and 30 June 1978 and as from 1 January 1979 if he did not pass that tax on to the person receiving his services so as to entitle that person to deduct the input tax . Such a right to deduct could arise only if the tax was passed on in accordance with the formalities prescribed by the directive in that regard and if the recipient of the services is himself subject to VAT .*

## Parties

*In Case 207/87*

*REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht ( Finance Court ) Rheinland-Pfalz for a preliminary ruling in the proceedings pending before that court between*

*Gerd Weissgerber*

*and*

*Finanzamt Neustadt an der Weinstrasse*

*on the interpretation of the Sixth Council Directive ( 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 ),*

*THE COURT ( Sixth Chamber )*

*composed of : O . Due, President of the Chamber, G . C . Rodríguez Iglesias, T . Koopmans, K . Bahlmann and T . F . O' Higgins, Judges,*

*Advocate General : C . O . Lenz*

*Registrar : D . Louterman, Administrator*

*having regard to the Report for the Hearing and further to the hearing on 3 May 1988, at which the defendant was represented by K . Widmann, Ministerialrat in the Ministry of Finance, Rheinland-Pfalz, acting as Agent, and the Commission of the European Communities by its Agent, Goetz zur Hausen,*

*after hearing the Opinion of the Advocate General delivered at the sitting on 14 June 1988,*

*gives the following*

*Judgment*

## **Grounds**

*1 By order of 15 June 1987, which was received at the Court on 7 July 1987, the Finanzgericht ( Finance Court ) Rheinland-Pfalz referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Article 13 B ( d ) ( 1 ) of the Sixth Council Directive ( 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 ) in order to enable it to determine whether that provision may be relied upon by credit negotiators in respect of transactions carried out between 1 January and 30 June 1978 and as from 1 January 1979, and if it may, under what conditions .*

*2 It should be recalled that, under Article 1 of the Sixth Directive of 17 May 1977, the Member States were to adopt by 1 January 1978 at the latest the laws, regulations and administrative provisions necessary in order to bring their value-added tax systems into line with the requirements of the directive . A number of Member States, including the Federal Republic of Germany, were unable to make the necessary adjustments within the prescribed period and therefore, on 26 June 1978, the Council adopted the Ninth Directive which was addressed to those Member States and authorized them to implement the Sixth Directive by 1 January 1979 at the*

latest . The Ninth Directive was notified to its addressees on 30 June 1978 .

3 It was not until the adoption of the Law of 26 November 1979 ( Bundesgesetzblatt I, p . 1953 ) and with effect from 1 January 1980 that the Federal Republic of Germany implemented the Sixth Directive and in particular the exemption provided for in Article 13 B ( d ) ( 1 ) in respect of the negotiation of credit .

4 It should further be recalled that in its judgment of 19 January 1982 in Case 8/81 ( Becker v Finanzamt Muenster-Innenstadt (( 1982 )) ECR 53 ) and its judgment of 10 June 1982 in Case 255/81 ( R . A . Grendel GmbH v Finanzamt fuer Koerperschaften (( 1982 )) ECR 2301 ) the Court ruled that as from 1 January 1979 it was possible for the provision concerning the exemption from turnover tax of transactions consisting of the negotiation of credit to be relied upon, in the absence of the implementation of the Sixth Directive, by a credit negotiator where he had refrained from passing that tax on to persons following him in the chain of supply . In its judgment of 22 February 1984 in Case 70/83 ( Kloppenburg v Finanzamt Leer (( 1984 )) ECR 1075 ) the Court reached the same conclusion as regards transactions carried out between 1 January and 30 June 1978, the date of the notification of the Ninth Directive .

5 It appears from the documents before the Court that the plaintiff in the main proceedings, Gerd Weissgerber, is an insurance agent and finance negotiator . In 1978 and 1979 he introduced clients who were seeking credit to three German banks . For that activity the banks remunerated him by means of commissions paid into his bank accounts . The credit notes which the banks sent to Mr Weissgerber did not show any amount of VAT . In the VAT assessment for 1978 and 1979, the German tax authorities included in the taxable transactions the commissions referred to above, in accordance with Mr Weissgerber' s tax returns .

6 In the appeal proceedings which he brought before the Finanzgericht Rheinland-Pfalz against the Finanzamt ( Tax Office ) Neustadt an der Weinstrasse, Mr Weissgerber relies upon the judgments of the Court cited above, whilst the Finanzamt contends in particular that the VAT was passed on, albeit covertly .

7 In order to resolve the issue the Finanzgericht stayed the proceedings and submitted the following questions to the Court :

"1 . In relation to transactions carried out between 1 January and 30 June 1978 and transactions carried out in 1979, may the provision contained in Article 13 B ( d ) ( 1 ) of the Sixth Directive ( 77/388/EEC ) on turnover tax concerning the exemption from turnover tax of transactions consisting of the negotiation of credit be relied upon, in the absence of the implementation of that directive, by a credit negotiator if he did not pass that tax on to the persons receiving his services?

2 . If Question 1 is answered in the affirmative, must the credit negotiator pay turnover tax if he 'covertly' passed on the tax, or only if he 'overtly' passed it on?

3 . If turnover tax is also payable where the tax is passed on covertly, is it sufficient, for there to have been a covert passing on of turnover tax, that the credit negotiator, in agreeing his commission, expected that out of it he would have to pay turnover tax?"

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, and the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court .

9 As regards the first question, it is sufficient to state that the documents in the case do not contain any new factor in relation to the aforesaid judgments of the Court and that those judgments must therefore be confirmed .

10 The second and third questions essentially seek a fuller explanation of the condition laid down in those judgments for exemption from tax, namely that the trader should have "refrained from passing the tax on to persons following him in the chain of supply ". These two questions should therefore be considered together .

11 In order to provide such a fuller explanation, it is necessary to examine the said condition, which appears in the operative parts of the judgments, in the light of the grounds of the judgments in order to put it in its context . Since the condition was first mentioned in the judgment of 19 January 1982 in *Becker*, cited above, reference should be made to that judgment .

12 An examination of the grounds of the judgment in *Becker* shows that in that case, in order to demonstrate that the exemption provided for by the directive may not be relied upon by individuals, the German tax authorities, supported by the Government of the Federal Republic of Germany, had put forward a number of arguments based on the particular features of the tax system concerned, namely the chain of taxation typical of VAT on account of the right of deduction . The tax authorities had emphasized in particular the disruption which could be caused by the fact that an exemption might be claimed a posteriori, to the detriment of taxpayers in a business relationship with the person exempted from the tax .

13 In response to those misgivings the Court pointed out that the scheme of the directive was such that on the one hand by availing themselves of an exemption persons entitled thereto necessarily waived the right to claim a deduction in respect of inputs and on the other hand, having been exempted from the tax, they were unable to pass on any charge whatsoever to the person following them in the chain of supply, with the result that the rights of third parties in principle could not be affected .

14 In particular, as regards the disruption caused by exemptions claimed a posteriori by taxpayers under the directive, the Court observed that that objection was not relevant to the case of a taxpayer who had claimed the benefit of the exemption when he submitted his tax return and who had consequently refrained from invoicing the tax to the recipients of his services, with the result that third parties were not affected .

15 It must therefore be stated that the purpose of the condition laid down in the judgments of the Court cited above, viewed in the light of the grounds of the judgment in *Becker*, is to prevent a claim for the exemption provided for by the directive made a posteriori by a trader from having adverse effects on other traders who have already deducted the amounts of VAT in question as input tax . Such a consequence could arise only if the trader claiming exemption has passed on the tax in accordance with the formalities prescribed by the directive in that regard and if the recipient of the services is himself subject to VAT .

16 It follows from the foregoing that the answer to the questions asked by the national court should be that in the absence of implementation of the Sixth Council Directive ( 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, a credit negotiator may rely on the tax exemption provision contained in Article 13 B ( d ) ( 1 ) of the directive in respect of transactions carried out between 1 January and 30 June 1978 and as from 1 January 1979 if he did not pass that tax on to the person receiving his services so as to entitle that person to deduct the input tax .

# Decision on costs

## Costs

*17 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable . Since these 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 ( Sixth Chamber )*

*in answer to the questions submitted to it by the Finanzgericht Rheinland-Pfalz by order of 15 June 1987, hereby rules :*

*In the absence of implementation of the Sixth Council Directive ( 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, a credit negotiator may rely on the tax exemption provision contained in Article 13 B ( d ) ( 1 ) of the directive in respect of transactions carried out between 1 January and 30 June 1978 and as from 1 January 1979 if he did not pass that tax on to the person receiving his services so as to entitle that person to deduct the input tax .*