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Judgment of the Court (Sixth Chamber) of 7 May 1992. - Aldo Bozzi v Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e dei Procuratori legali. - Reference for a preliminary ruling: Pretura di Milano, Sezione Lavoro - Italy. - Interpretation of Article 33 of the Sixth VAT Directive. - Case C-347/90.

European Court reports 1992 Page I-02947

Summary

Parties

Grounds

Decision on costs

Operative part

Keywords

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Tax provisions ° Harmonization of laws ° Turnover tax ° Common system of value added tax ° Prohibition of collecting other national taxes having the character of turnover taxes ° Purpose ° Concept of "turnover taxes" ° Scope ° Contributions like the Italian "contributo integrativo" paid to the Lawyers' National Provident Fund ° Excluded

(Council Directive 77/388, Art. 33)

Summary

Whilst Article 33 of the Sixth VAT Directive (77/388/EEC), with the purpose of preventing the introduction of taxes, duties or charges which, through being levied on the movement of goods and services in a way comparable to VAT, would jeopardize the functioning of the common system of VAT, prohibits the maintenance or introduction of taxes which have the essential characteristics of VAT, it does not preclude the maintenance or introduction of other kinds of taxes, duties or charges which do not have those characteristics.

Consequently, Article 33 does not preclude the introduction or maintenance of a contribution like the supplementary contribution ("contributo integrativo") payable in Italy by advocates and procuratori legali to the Lawyers' National Provident Fund and calculated in principle by applying a surcharge to the earnings making up their turnover. The supplementary contribution is not a general levy; it is not always proportional to the fees payable by clients for professional services rendered and it is payable at one stage only, with no provision for deduction.

Parties

In Case C-347/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura di Milano, Sezione Lavoro, for a preliminary ruling in the proceedings pending before that court between

Aldo Bozzi

and

Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e dei Procuratori Legali,

on the interpretation of Article 33 of 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 (OJ 1977 L 145, p. 1),

THE COURT (Sixth Chamber),

composed of: F.A. Schockweiler, President of the Chamber, G.F. Mancini, C.N. Kakouris, M. Diez de Velasco and J.L. Murray, Judges,

Advocate General: F.G. Jacobs,

Registrar: D. Triantafyllou, Administrator,

after considering the written observations submitted on behalf of:

° A. Bozzi;

° the Cassa di Previdenza, by P. Vozzi, Director-General, Special Agent of the Cassa Nazionale di Previdenza, V. Perrone, of the Milan Bar, and M. de Stefano, of the Rome Bar;

° the Italian Government, by Franco Favara, Avvocato dello Stato, acting as Agent;

° the Commission, by J. Foens Buehl and E. Traversa, of the Legal Service, acting as Agents;

having regard to the Report for the Hearing,

after hearing the oral observations of A. Bozzi, the Cassa di Previdenza, represented by M. de Stefano and P. Adonnino, of the Rome Bar, the Italian Government and the Commission at the hearing on 13 February 1992,

after hearing the Opinion of the Advocate General at the sitting on 19 March 1992,

gives the following

Grounds

1 By order of 14 December 1989, which was received at the Court on 28 November 1990, the Pretore di Milano (Milan Magistrate's Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 33 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 (OJ L 145, p. 1, hereinafter "the Sixth Council Directive").

2 The question was raised in proceedings between Aldo Bozzi, a member of the Milan Bar, and the Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e dei Procuratori Legali (Lawyers' National Provident Fund, hereinafter "the Fund") concerning rules under which a supplementary contribution ("contributo integrativo") must be paid in Italy by advocates and procuratori legali to the Fund.

3 It appears from the documents before the Court that all advocates and procuratori legali who are in continuous practice in Italy are required to be members of the Fund, which was set up by Law No 6 of 8 January 1952 (Gazzetta Ufficiale della Repubblica Italiana No 16 of 19 January 1952). Contributions to the Fund and the system of benefits are governed by Law No 576 of 20 September 1980 ("Reform of the insurance scheme for the Bar", Gazzetta Ufficiale della Repubblica Italiana No 266 of 27 September 1980, hereinafter "Law No 576/1980").

4 The rules governing supplementary contributions are laid down in Article 11 of Law No 576/1980. Under that provision: (a) any person whose name appears on the roll of advocates and procuratori legali, including trainees affiliated to the Fund, must pay to the Fund a certain percentage of all fees which contribute to his annual turnover for the purposes of VAT, whether or not the amount has been paid by the client; the amount concerned may be passed on to the client; (b) professional associations and companies must also pay the supplement in respect of each of their members whose name is entered on the roll of advocates and procuratori legali. The total annual amount of the compulsory contributions payable to the Fund by each member of the profession is calculated as a percentage of the turnover of the association or company equal to the percentage of the share of income received by those members; (c) every year each member must pay to the Fund as a supplementary contribution a minimum amount calculated as a percentage of the turnover equal to 15 times the minimum contribution referred to in the second paragraph of Article 10 payable in respect of the same year; (d) the percentage of the supplement is fixed at 2%; (e) the supplementary contribution is not subject to income tax or VAT and is not taken into account for the purposes of calculating professional income.

5 Mr Bozzi considered that the levying of such a supplementary contribution was unlawful on the ground that it was contrary to Article 33 of the Sixth Council Directive. He therefore brought an action before the Pretore di Milano to recover the amounts paid in respect of the contribution. The Pretore di Milano decided to refer the following question to the Court for a preliminary ruling:

"Is Article 33 of the Sixth Council Directive (No 77/388/EEC of 17 May 1977) to be interpreted as precluding the application in a Member State of a requirement that lawyers pay to the Lawyers' National Provident Fund supplementary contributions based on the consideration payable by clients for their services, having regard to the fact that the consideration is already subject to VAT, the supplementary contribution is to be included separately on every invoice together with the VAT payable by the client and the contributions are used to provide insurance solely on the basis of the principle of solidarity and for all contributing lawyers, but not with regard to the individual

contributors since their contributions do not count for pension purposes and cannot be reclaimed in the event that entitlement to a pension is not acquired?"

6 Reference is made to the Report for the Hearing for a more detailed account of the facts of the case and in particular the provisions concerning the Fund, the procedure and the written observations submitted to the Court, which are mentioned or discussed below only in so far as is necessary for the reasoning of the Court.

7 The question referred for a preliminary ruling by the national court is essentially whether Article 33 of the Sixth Council Directive precludes the introduction or maintenance of a contribution in the nature of a supplementary contribution ("contributo integrativo") payable in Italy by advocates and procuratori legali to the Fund.

8 In answering that question it must be borne in mind that Article 33 of the Sixth Directive provides that "without prejudice to other Community provisions, the provisions of this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and, more generally, any taxes, duties or charges which cannot be characterized as turnover taxes".

9 The Court has consistently held (see, most recently, its judgment in Case C-200/90 Dansk Denkavit ApS and Another v Skattenministeriet [1992] ECR I-2217) that the purpose of Article 33 is to prevent the introduction of taxes, duties or charges which, through being levied on the movement of goods and services in a way comparable to VAT, would jeopardize the functioning of the common system of VAT. Taxes, duties and charges must in any event be regarded as being imposed on the movement of goods and services in a way comparable to VAT if they exhibit the essential characteristics of VAT.

10 It follows that Article 33 does not preclude the maintenance or introduction of other kinds of taxes, duties or charges which do not have the essential characteristics of VAT.

11 In order to determine whether the prohibition laid down in Article 33 applies to a contribution such as the supplementary contribution under consideration in the present case, it is therefore necessary to examine whether it has the essential characteristics of VAT and whether it must therefore be regarded as a turnover tax within the meaning of that term as it is used in Article 33.

12 As the Court has repeatedly held (see, in particular, the judgments in Case 252/86 Bergandi v Directeur-Général des Impôts [1988] ECR 1343, paragraph 15, Joined Cases 93/88 and 94/88 Wisselink and Others v Staatssecretaris van Financiën [1989] ECR 2671, paragraph 18, Case C-109/90 Giant [1991] ECR I-1385, paragraphs 11 and 12 and in the aforementioned Dansk Denkavit case, paragraph 11), the essential features of VAT are as follows: VAT applies generally to transactions relating to goods or services; it is proportional to the price of those goods or services; it is charged at each stage of the production and distribution process; and finally it is imposed on the added value of goods and services, since the tax payable on a transaction is calculated after deduction of the tax paid on the previous transaction.

13 A contribution of the kind referred to by the national court in the present case does not have the abovementioned essential features of VAT.

14 First, the supplementary contribution is not a levy of a general nature. Law No 576/1980 affects only advocates and procuratori legali and the contribution provided for in Article 11 does not apply to fees for all services provided by advocates and procuratori legali since, as was explained at the hearing, it applies only to their court work. Furthermore, although it is true, as is apparent from the documents, that other liberal professions are subject to similar legislation, that is not the case with all such professions or with persons who provide a service on a commercial basis.

15 Secondly, the supplementary contribution is not always proportional to the fee due from the client for the professional service. Although in principle Article 11 of Law No 576/1980 provides that the amount of the supplementary contribution should be a percentage of the consideration making up annual turnover for the purposes of VAT, that same provision nevertheless contains two important exceptions. The first concerns professional associations and companies for which it is provided that the supplementary contribution is payable as a percentage of the income received by the person concerned. It is clear that in such a case the basis on which the supplementary contribution is calculated is determined by criteria other than the price of services paid by clients. The second exception concerns members of the Fund whose turnover is less than a certain amount and who must therefore pay a minimum contribution calculated on a flat-rate basis. For that category, which represents, as emerged during oral argument before the Court, 25% of the advocates and procuratori legali affiliated to the Fund, the supplementary contribution is likewise not based on the price paid for provision of the service.

16 Thirdly, unlike VAT, the supplementary contribution is payable at one stage only. It is payable only when the lawyer sends his client a statement of fees. Furthermore, there is no provision for deduction, for the lawyer bound to pay to the Fund the supplementary contribution invoiced to his clients is not entitled to make any deduction whatsoever in relation to the cost of the goods and services used in carrying out his activities. Similarly, but conversely, if the client is subject to VAT, he may deduct from the tax which he owes the input VAT paid to the lawyer but not the supplementary contribution.

17 Accordingly, the reply to the question put to the Court must be that the Sixth Council Directive must be interpreted as meaning that it does not preclude the introduction or maintenance of contributions having the characteristics of the supplementary contribution ("contributo integrativo") payable in Italy by advocates and procuratori legali to the Fund.

Decision on costs

Costs

18 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

Operative part

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Pretore di Milano by order of 14 December 1989, hereby rules:

Article 33 of the Sixth Council Directive (77/388/EEC) of 17 May 1977, on the harmonization of the laws of Member States relating to turnover taxes ° Common system of value added tax, must be interpreted as meaning that it does not preclude the introduction or maintenance of contributions having the characteristics of the supplementary contribution ("contributo integrativo") payable in Italy by advocates and procuratori legali to the Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e dei Procuratori Legali.