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Judgment of the Court (Fourth Chamber) of 19 November 1998. - Société financière d'investissements SPRL (SFI) v Belgian State. - Reference for a preliminary ruling: Tribunal de première instance de Liège - Belgium. - VAT - Limitation period - Starting-point - Method of determination. - Case C-85/97.

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Keywords

1 Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Recovery of the tax - Limitation period - National procedural rules - Conditions for application

(Council Directive 77/388, Arts 4 and 10)

2 Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Deduction of input tax - Application to benefits in kind granted by an undertaking to its employees irrespective of the State in which the supplier is established

(Council Directives 67/227 and 77/388)

Summary

3 Articles 4 and 10 of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes do not preclude a national practice which, in the case of transactions subject to value added tax effected by a company before it was registered for value added tax, consists in fixing the starting-point of the limitation period for the recovery of that tax at the 20th of the month following the quarter in which that registration took place.

Since those articles do not determine the point in time from which the limitation period for the recovery of value added tax begins to run and there are no other provisions in the Sixth Directive concerning that question, Member States are authorised to apply their own procedural rules, provided that the latter are not less favourable than those governing similar domestic actions nor arranged in such a way as to render it virtually impossible or excessively difficult to exercise rights

conferred by Community law.

4 The principle that taxable persons are authorised to deduct from the value added tax for which they are liable the tax which the goods have already borne on each input transaction is of general application. Thus, neither the First Directive 67/227 nor the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes establishes a distinction according to whether a supply of services is made by a supplier established in the national territory or by one established in another Member State.

Therefore, the First and Sixth Directives preclude the value added tax on a benefit granted by an employer to his employee in the form of the placing of a vehicle at his disposal for private use from being calculated by including in the taxable amount the value added tax paid by the employer in another Member State on the renting of that vehicle, whereas, if the vehicle had been rented in the Member State in question, the taxable amount would not have included the value added tax paid.

Parties

In Case C-85/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal de Première Instance de Liège (Belgium) for a preliminary ruling in the proceedings pending before that court between

Société Financière d'Investissements SPRL (SFI)

and

Belgian State

"on the interpretation of the 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) and Article 95 of the EC Treaty,

THE COURT

(Fourth Chamber),

composed of: J.L. Murray (Rapporteur), acting for the President of the Fourth Chamber, H. Ragnemalm and K.M. Ioannou, Judges,

Advocate General: J. Mischo,

Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- Société Financière d'Investissements SPRL (SFI), by Jean-Pierre Bours and Xavier Thiebaut, of the Liège Bar,

- the Belgian Government, by Jan Devadder, General Adviser in the Ministry of Foreign Affairs, External Trade and Development Cooperation, acting as Agent, assisted by Bernard van de Walle de Ghelcke, of the Brussels Bar,

- the German Government, by E. Röder, Ministerialrat at the Federal Ministry of the Economy, acting as Agent,

- the United Kingdom Government, by John E. Collins, Assistant Treasury Solicitor, acting as Agent,

- the Commission of the European Communities, represented by Hélène Michard and Enrico Traversa, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Société Financière d'Investissements SPRL (SFI), represented by Xavier Thiebaut, the Belgian Government, represented by Bernard van de Walle de Ghelcke and by Guido de Wit, of the Brussels Bar, and the Commission, represented by Hélène Michard, at the hearing on 30 April 1998,

after hearing the Opinion of the Advocate General at the sitting on 19 May 1998,

gives the following

Judgment

Grounds

1 By judgment of 24 February 1997, received at the Court on 27 February 1997, the Tribunal de Première Instance (Court of First Instance), Liège, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of the 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') and Article 95 of the EC Treaty.

2 Those questions were raised in proceedings between Société Financière d'Investissements SPRL (`SFI') and the Belgian State concerning the determination of the starting-point of the limitation period for the recovery of value added tax (`VAT') on the company's provision to one of its employees of a vehicle rented in Luxembourg, and as to the basis on which that tax should be calculated.

The Belgian legislation

The point in time from which the limitation period for the recovery of VAT begins to run

3 Article 17(1) of the Code de la TVA (`VAT Code') provides:

`For supplies of goods, the chargeable event shall occur and the tax shall be due at the time of delivery.

Where, however, the price is invoiced or received, in whole or in part, before that time, the tax shall be due, depending on the case, at the time of issue of the invoice or the time of receipt, on the basis of the amount invoiced or received.

Moreover, where the time contractually stipulated for the payment of all or part of the price falls before the times referred to in the above paragraphs, the tax shall be due at that time in the payable amount.'

4 Article 81 of the VAT Code provides:

`The limitation period for actions to collect tax, interest and fines in respect of tax shall be five years from the date on which the cause of action arose.'

5 The first and second paragraphs of Article 16 of Royal Decree No 1 of 23 July 1969 on measures for ensuring payment of VAT (Moniteur Belge, 1969, p. 7380) provide:

`Taxable persons shall submit the return referred to in Article 50.1.3 of the Code to their local VAT office not later than the 20th of each month.

Taxable persons whose annual turnover excluding VAT does not exceed BFR 20 million shall submit only a quarterly claim not later than the 20th of the month following each quarter. They may, however, be authorised, upon conditions laid down by the Finance Minister or his representative, to make a return not later than the 20th of each month.

...'

The calculation of VAT

6 Article 32 of the VAT Code provides:

`In the case of exchange and, more generally, where the consideration is a supply that does not consist solely of a sum of money, that supply shall, for the calculation of the tax, be counted at its normal value.

The normal value represents the price capable of being obtained within the country for each of the supplies at the time the tax is due, upon conditions of full competition between an independent supplier and an independent purchaser, at the same stage of marketing.'

7 Article 28.6 of the VAT Code provides:

`The taxable amount shall not include:

...

6. the value added tax itself.'

Community law

8 Under the first and second paragraphs of Article 2 of the First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition 1967, p. 14, `hereinafter the First Directive'):

`The principle of the common system of value added tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged.

On each transaction, value added tax, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of value added tax borne directly by the various cost components.

...'

9 Article 4 of the Sixth Directive, as it applied before the amendments which took effect on 1 January 1993, defined `taxable person' as follows:

`1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

...'

10 Article 10 of the Sixth Directive, under the heading `Chargeable event and chargeability of tax' provides:

`1. (a) "Chargeable event" shall mean the occurrence by virtue of which the legal conditions necessary for tax to become chargeable are fulfilled.

(b) The tax becomes "chargeable" when the tax authority becomes entitled under the law at a given moment to claim the tax from the person liable to pay, notwithstanding that the time of payment may be deferred.

2. The chargeable event shall occur and the tax shall become chargeable when the goods are delivered or the services are performed. Deliveries of goods other than those referred to in Article 5(4)(b) and supplies of services which give rise to successive statements of account or payments shall be regarded as being completed at the time when the periods to which such statements of account or payments pertain expire.

...'

11 Article 22 of the Sixth Directive, headed `Obligations under the internal system', provides:

`1. Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

...

4. Every taxable person shall submit a return within an interval to be determined by each Member State. This interval may not exceed two months following the end of each tax period. The tax period may be fixed by Member States as a month, two months, or a quarter. However, Member States may fix different periods provided that these do not exceed a year.

The return must set out all the information needed to calculate the tax that has become chargeable and the deductions to be made, including, where appropriate, and in so far as it seems necessary for the establishment of the tax basis, the total amount of the transactions relative to such tax and deductions, and the total amount of the exempted supplies.'

The dispute in the main proceedings

12 SFI was incorporated by notarial act of 21 October 1981 under the name `SPRL Constructions et Investissements' and was registered for VAT on that date in respect of `real property transactions'. That registration was cancelled on 1 January 1982 because no taxable transactions had been carried out.

13 After its name had been changed to `Société Financière d'Investissements' and its objects had been widened on 8 September 1988, SFI applied on 26 April 1989 to be re-registered for VAT.

14 On 16 May 1989, when the application for re-registration was still being processed, SFI submitted a VAT return for the period from 1 January 1988 to 31 December 1988. SFI was re-registered for VAT on 1 June 1989.

15 Following a VAT inspection on 2 February 1993 relating to the period from 1 January 1988 to 31 December 1991, the VAT authorities noted various irregularities, which meant that SFI was obliged to pay back the principal sum of BFR 4 062 889 in VAT, and drew up a regularisation schedule.

16 On 12 January 1994, the Receveur (Tax Collector) of the Premier Bureau de Recettes TVA (First VAT Collection Office), Liège, issued a payment order for that sum, together with interest for late payment at 0.8% per month from 1 January 1992, and a fine of BFR 609 000. The order was made enforceable on 21 January 1994 and served on 26 January 1994.

17 On 14 March 1994, the Belgian State had served on SFI an order requiring payment of BFR 3 864 231 in VAT, BFR 203 000 in fines and BFR 309 120 in statutory interest for the period to 20 March 1994.

18 On 1 April 1994, SFI made an application to the Tribunal de Première Instance, Liège, for the payment order of 12 January 1994 to be set aside.

19 In its action, SFI maintains that the Belgian authorities' position that the limitation period should run from the date on which, in view of its registration for VAT on 1 June 1989, the company should have submitted its first return, namely 20 July 1989, is incompatible with Articles 4 and 10 of the Sixth Directive. SFI argues that the action for recovery of VAT in respect of the period prior to 31 December 1988 was time-barred. In its submission, the limitation period runs from the date on which a sum becomes chargeable, which, under Article 17 of the VAT Code, is the date of the chargeable event constituted by delivery of the goods or performance of the services liable to VAT.

20 SFI and the Belgian State also disagree about the method of calculating the benefit in kind consisting of providing an employee with a car, for his private journeys, rented by SFI from a company established in Luxembourg. SFI complains that the Belgian tax authorities included the VAT which it paid in Luxembourg in the basis for calculating that benefit, whereas, if the vehicle had been rented in Belgium, the taxable amount would not have included VAT. In SFI's submission, the method of calculation used by the Belgian authorities is contrary not only to Article 95 of the Treaty but also to the principle of fiscal neutrality laid down by the Sixth Directive.

21 Taking the view that the solution of the dispute before it depended on the interpretation of the Sixth Directive and of Article 95 of the Treaty, the Tribunal de Première Instance, Liège, decided to stay proceedings and to refer the following questions for a preliminary ruling:

`1. Is the position taken by the VAT Authorities, that the limitation period for the collection of tax runs from the 20th of the month following the quarter in which registration for VAT took place, as regards taxable transactions carried out before that registration, compatible with Articles 4 and 10 of the Sixth VAT Directive?

2. Does a system under which VAT on a benefit in kind granted to an employee of an undertaking is calculated on a VAT inclusive basis when Belgian VAT is paid by the employer and on a VAT exclusive basis when VAT of another Member State is paid offend against Article 95 of the Treaty of Rome and the principle of "fiscal neutrality" laid down by the Sixth VAT Directive?'

The first question

22 By its first question, the national court is essentially asking whether Articles 4 and 10 of the Sixth Directive preclude a national practice which, in the case of transactions subject to VAT effected by a company before it was registered for VAT, consists in fixing the starting-point of the limitation period for recovery of that tax at the 20th of the month following the quarter in which that registration took place.

23 The first point to be made is that Article 4 of the Sixth Directive defines `a taxable person'. Article 10, as the heading above it indicates, concerns the chargeable event and the `chargeability of tax'. That provision enables the date on which the tax debt arises to be determined.

24 As for Article 22, paragraph 4 thereof governs the submission of returns by taxable persons, in particular the periods for which they are submitted and their content, whilst paragraph 5 provides that the amount of the tax must be paid by the taxable person when submitting the return, unless provision has been made for a different payment date or for the levying of interim payments.

25 Thus, none of those provisions determines the point in time from which the limitation period for the recovery of VAT begins to run. Nor, moreover, does examination of the Sixth Directive reveal any other provision concerning this question.

26 It has been consistently held that, in the absence of Community rules governing a matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from the direct effect of Community law, provided that those rules are not less favourable than those governing similar domestic actions nor arranged in such a way as to render it virtually impossible or excessively difficult to exercise rights conferred by Community law (see, in particular, the judgment in Case C-312/93 Peterbroeck and Others v Belgian State [1995] ECR I-4599, paragraph 12).

27 It is undisputed that those two conditions are met in this case.

28 SFI, however, argues that the practice of the Belgian administration infringes the principle of equality since a taxable person may exercise his right to deduct VAT only within a period of five years from the date on which that right arose, that is to say from the date on which the tax is due, whereas the five-year limitation period begins to run as against the tax authorities on the date on which the return should, in principle, be made.

29 On that point, it should be recalled first of all that, where national rules fall within the scope of Community law, and reference is made to the Court for a preliminary ruling, the Court must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with the fundamental rights the observance of which the Court ensures (Case C-260/89 ERT v Dimotiki Etairia Pliroforissis [1991] ECR I-2925, paragraph 42).

30 Next, the Court has consistently held that the principle of equality is one of the fundamental principles of Community law and requires that similar situations should not be treated differently

unless differentiation is objectively justified (Case 215/85 Bundesanstalt für Landwirtschaftliche Marktordnung v Raiffeisen Hauptgenossenschaft [1987] ECR 1279, paragraph 23).

31 As far as the present case is concerned, VAT is incontestably a matter governed by Community law. The fact that, in the absence of Community rules, the Member States are entitled to apply their own procedural rules, does not alter that finding.

32 However, the position of the VAT authorities cannot be compared with that of a taxable person. The authorities do not have the information necessary to determine the amount of the tax chargeable and the deductions to be made until, at the earliest, the day when the return referred to in Article 22(4) of the Sixth Directive is made, which in this case corresponds to the 20th of the month following the quarter in which VAT registration took place. In the case of an inaccurate return, or where it turns out to be incomplete, it is therefore only from that time that the authorities can start to recover the unpaid tax.

33 Thus, the fact that the five-year limitation period begins to run as against the tax authorities on the date on which the return should in principle be made, whereas an individual may exercise his right to deduction only within a period of five years as from the date on which that right arose is not such as to infringe the principle of equality.

34 SFI also argues that the position of the Belgian authorities is a source of legal uncertainty.

35 That argument cannot be accepted. As the Advocate General rightly points out at paragraph 16 of his Opinion, by taking as the starting-point of relations between the tax authorities and the taxable person the date on which the authorities take official notice of the declaration of commencement of activity referred to in Article 22(1) of the Sixth Directive, the national legislation in question takes the requirement of legal certainty into account, since, once registered, the taxable person can no longer be in any doubt as to the period he has in which to perform his periodic obligations or, consequently, as to the limitation period which he may enjoy.

36 It follows from the foregoing that Articles 4 and 10 of the Sixth Directive do not preclude a national practice which, in the case of transactions subject to VAT effected by a company before it was registered for VAT, consists in fixing the starting-point of the limitation period for the recovery of that tax at the 20th of the month following the quarter in which that registration took place.

The second question

37 By its second question, the national court is essentially asking whether Article 95 of the Treaty and the Sixth Directive preclude the VAT on a benefit granted by an employer to his employee in the form of the placing of a vehicle at his disposal for private use from being calculated by including in the taxable amount the VAT paid by the employer in another Member State on the renting of that vehicle, whereas, if the vehicle had been rented in the Member State concerned, the taxable amount would not have included the VAT paid.

38 In answering that question, it is sufficient to note that the common system of VAT established by the First Directive on the basis of Articles 99 and 100 of the EEC Treaty consists, by virtue of the first paragraph of Article 2 of that directive, in the application to goods and services up to and including the retail stage of a general tax on consumption which is exactly proportional to the price of the goods and services, irrespective of the number of transactions which take place in the production and distribution process before the stage at which the tax is charged. However, as the second paragraph of that provision states, VAT is chargeable on each transaction only after deduction of the amount of VAT borne directly by the cost of the various price components. The procedure for deduction is so arranged by Article 17(2) of the Sixth Directive that only taxable persons are authorised to deduct from the VAT for which they are liable the VAT which the goods have already borne (Case 15/81 Schul v Inspecteur der Invoerrechten en Accijnzen [1982] ECR

1409, paragraph 10).

39 The deduction principle just stated is of general application. Thus, neither the First Directive nor the Sixth Directive establishes a distinction according to whether a supply of services is made by a supplier established in the national territory or by one established in another Member State.

40 In view of the foregoing, there is no need for the Court to rule on the question in so far as it concerns Article 95 of the Treaty.

41 The answer to be given to the second question must therefore be that the First and Sixth Directives preclude the VAT on a benefit granted by an employer to his employee in the form of the placing of a vehicle at his disposal for private use from being calculated by including in the taxable amount the VAT paid by the employer in another Member State on the renting of that vehicle, whereas, if the vehicle had been rented in the Member State in question, the taxable amount would not have included the VAT paid.

Decision on costs

Costs

42 The costs incurred by the Belgian, German and United Kingdom Governments and by the Commission, 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 proceedings pending before the national court, the decision on costs is a matter for that court.

Operative part

On those grounds,

THE COURT

(Fourth Chamber),

in answer to the questions referred to it by the Tribunal de Première Instance de Liège by judgment of 24 February 1997, hereby rules:

43 Articles 4 and 10 of the 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 do not preclude a national practice which, in the case of transactions subject to value added tax effected by a company before it was registered for value added tax, consists in fixing the starting-point of the limitation period for the recovery of that tax at the 20th of the month following the quarter in which that registration took place.

44 The First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes and the Sixth Directive 77/388 preclude the value added tax on a benefit granted by an employer to his employee in the form of the placing of a vehicle at his disposal for private use from being calculated by including in the taxable amount the value added tax paid by the employer in another Member State on the renting of that vehicle, whereas, if the vehicle had been rented in the Member State in question, the taxable amount would not have included the value added tax paid.