

Arrêt de la Cour
Case C-307/01

**Peter d'Ambrumenil and Dispute Resolution Services Ltd
v
Commissioners of Customs & Excise**

(Reference for a preliminary ruling from the VAT and Duties Tribunal, London (United Kingdom))

«(Sixth VAT Directive – Exemption for medical care provided in the exercise of the medical and paramedical professions)»

Opinion of Advocate General Stix-Hackl delivered on 30 January 2003 Judgment of the Court (Fifth Chamber), 20 November 2003

Summary of the Judgment

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Exemptions provided for by the Sixth Directive – Exemption for medical care provided in the exercise of the medical and paramedical professions – Scope

(Art. 13A(1)(c) of Council Directive 77/388) Article 13A(1)(c) of Sixth Directive 77/388, relating to the exemption from value added tax of certain medical services, does not exempt all the services which may be effected in the exercise of the medical and paramedical professions, but only provision of medical care. In that regard, it is the purpose of a medical service which determines whether it should be exempt from VAT. Therefore, if the context in which such a service is effected enables it to be established that its principal purpose is not the protection, including the maintenance or restoration, of health but rather the provision of advice required prior to the taking of a decision with legal consequences, the exemption does not apply to the service. Thus, Article 13A(1)(c) is to be interpreted as meaning that the exemption from VAT under that provision applies to medical services consisting of: conducting medical examinations of individuals for employers or insurance companies, the taking of blood or other bodily samples to test for the presence of viruses, infections or other diseases on behalf of employers or insurers, or certification of medical fitness, for example, as to fitness to travel, where those services are intended principally to protect the health of the person concerned. On the other hand, the said exemption does not apply to the following services, performed in the exercise of the medical profession: giving certificates as to a person's medical condition for purposes such as entitlement to a war pension, medical examinations conducted with a view to the preparation of an expert medical report regarding issues of liability and the quantification of damages for individuals contemplating personal injury litigation, the preparation of medical reports following examinations referred to in the previous indent and medical reports based on medical notes without conducting a medical examination, medical examinations conducted with a view to the preparation of expert medical reports regarding professional medical negligence for individuals contemplating litigation, the preparation of medical reports following examinations referred to in the previous indent and medical reports based on medical notes without conducting a medical examination. see paras 53, 60, 68-69, operative part 1-2

((Sixth VAT Directive – Exemption for medical care provided in the exercise of the medical and paramedical professions))

In Case C-307/01,

REFERENCE to the Court under Article 234 EC by the VAT and Duties Tribunal, London (United Kingdom), for a preliminary ruling in the proceedings pending before that tribunal between
Peter d'Ambrumenil, Dispute Resolution Services Ltd
and

Commissioners of Customs and Excise,

on the interpretation of Article 13A(1)(c) of 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 COURT (Fifth Chamber),,

composed of: A. Rosas (Rapporteur), acting for the President of the Fifth Chamber, D.A.O. Edward and A. La Pergola, Judges,
Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Principal Administrator,
after considering the written observations submitted on behalf of:

? Dr d'Ambrumenil and Dispute Resolution Services Ltd, by Dr d'Ambrumenil, and by M. Conlon QC,

? the United Kingdom Government, by J.E. Collins, acting as Agent, and by N. Paines QC,

? the Commission of the European Communities, by R. Lyal, acting as Agent,
having regard to the Report for the Hearing,

after hearing the oral observations of Dr d'Ambrumenil and of Dispute Resolution Services Ltd, of the United Kingdom Government and of the Commission, at the hearing on 20 November 2002,

after hearing the Opinion of the Advocate General at the sitting on 30 January 2003,

gives the following

Judgment

1 By decision of 6 June 2001, received at the Court on 6 August 2001, the VAT and Duties Tribunal, London, referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 13A(1)(c) of 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).

2 That question was raised in the course of a dispute between Peter d'Ambrumenil, who is a doctor, the company Dispute Resolution Services Ltd (hereinafter DRS) and the Commissioners of Customs and Excise, the competent authority in the United Kingdom in relation to value added tax (hereinafter VAT), on the tax treatment, with regard to that tax, of various supplies of services provided either jointly by the first two above-named parties, or by one of them.

Legal background

Community law

3 Under Article 2(1) of the Sixth Directive, VAT is chargeable on the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such.

4 Article 4 of the Sixth Directive provides:

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.

...

5 Article 13A(1) provides:

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

...

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

....

6 In Case C-384/98 *D. v W.* [2000] ECR I-6795 the Court held that Article 13A(1)(c) of the Sixth Directive is to be interpreted as meaning that it does not apply to medical services consisting, not in providing care to persons by diagnosing and treating a disease or any other health disorder, but in establishing the genetic affinity of individuals through biological tests.

National legislation

7 Under item 1(a) in Group 7 in Schedule 9 to the Value Added Tax Act 1994 (hereinafter the VATA 1994), read in conjunction with Section 31 of that Act, the supply of services by a person registered or enrolled in the register of medical practitioners is exempt from VAT.

8 Note 2 to that Group states: Paragraph ... (a) ... of item 1 include[s] supplies of services made by a person who is not registered or enrolled in any of the registers ... specified in [that paragraph] where the services are wholly performed or directly supervised by a person who is so registered or enrolled.

The main proceedings and the question referred

9 The first appellant in the main proceedings, Dr d'Ambrumenil, qualified in medicine in 1975. After having worked for the National Health Service as a general practitioner from 1978 to 1987, he established himself in private practice and continued to practise medicine in his private consulting rooms. In the course of his professional activities, Dr d'Ambrumenil has acted as an expert medical witness before various courts and given evidence in a large number of cases concerning, particularly, medical negligence, personal injury and disciplinary proceedings. He also acts as a professional arbitrator and mediator.

10 The second appellant in the main proceedings, DRS, is a company formed by Dr d'Ambrumenil in 1994. A substantial part of Dr d'Ambrumenil's professional activities have been carried on by DRS since 1997 when he ceased to practise medicine privately. The activities mentioned consist of the supply of services which require expertise which is both legal and medical, in particular arbitration and mediation services.

11 By decision notified to Dr d'Ambrumenil on 29 September 1997, the Commissioners of Customs and Excise concluded that several services provided either jointly by the two appellants in the main proceedings, or by one of them, fell within the scope of item 1 in Group 7 in Schedule 9 to the VATA 1994 and were therefore exempt from VAT.

12 Dr d'Ambrumenil appealed against that decision to the VAT and Duties Tribunal, London, which ordered DRS to be joined as party to the proceedings. By a preliminary decision given on 16 March 1999, the Tribunal proposed referring to the Court of Justice for a preliminary ruling a question on the interpretation to be given to the exemption provided for by Article 13A(1)(c) of the Sixth Directive in the light of the arguments which had been presented to it by the parties. The reference to the Court of that question was subsequently stayed pending the judgment in *D. v W.*, cited above.

13 According to the order for reference, and in particular from the preliminary decision attached thereto, the parties to the main proceedings agree that certain supplies of services by Dr d'Ambrumenil, in his own name or on behalf of DRS, are subject to VAT. However, in relation to other services provided by them, the appellants in the main proceedings dispute the view of the Commissioners of Customs and Excise which classifies those services as provision of medical care within the meaning of Article 13A(1)(c) of the Sixth Directive. According to the appellants, such services, even though they involve medical knowledge and experience, are not covered by the exemption under that provision, which concerns only medical interventions in order to diagnose, treat and, if possible, cure an illness or health problem.

14 In its preliminary decision, the VAT and Duties Tribunal expressed an opinion favourable to the position taken by the Commissioners of Customs and Excise, according to which the services at issue in the main proceedings are exempt services under Article 13A(1)(c) of the Sixth Directive. None the less, it considered that, in spite of the clarification supplied by the judgment in *D. v W.* as to whether VAT was payable on the services of a doctor who carries out a paternity test and makes a report thereon, the Court's interpretation was still required in order to decide on the tax treatment of the services referred to in the main proceedings.

15 In these circumstances the VAT and Duties Tribunal, London, decided to stay proceedings and to refer the following question to the Court for a preliminary ruling : Is Article 13A(1)(c) of [the Sixth Directive] to be interpreted as covering the following activities when performed in the exercise of the medical profession as defined by the Member State:

- (a) conducting medical examinations of individuals for employers or insurance companies,
- (b) the taking of blood or other bodily samples to test for the presence of viruses, infections or other diseases on behalf of employers or insurers,
- (c) certification of medical fitness, for example, as to fitness to travel,
- (d) giving certificates as to a person's medical condition for purposes such as entitlement to a war pension,
- (e) medical examinations conducted with a view to the preparation of expert medical reports regarding issues of liability and the quantification of damages for individuals contemplating personal injury litigation,
- (f) the preparation of medical reports
- (i) following the examinations referred to in (e) and
- (ii) based on medical notes without conducting a medical examination,
- (g) medical examinations conducted with a view to the preparation of expert medical reports regarding professional medical negligence for individuals contemplating litigation, and

- (h) the preparation of medical reports
- (i) following the examinations referred to in (g) and
- (ii) based on medical notes without conducting a medical examination?

The question referred

16 By its question, the VAT and Duties Tribunal is asking the Court to provide it with the criteria for the construction of Article 13A(1)(c) of the Sixth Directive to enable it to determine the tax treatment, with regard to VAT, of various services which can be provided in the exercise of the medical profession. More specifically, the referring court wishes to know whether the exemption under that provision applies to the various activities described in the question referred.

Observations submitted to the Court

17 The appellants in the main proceedings maintain that the services described in the question referred do not come within the field of application of the exemption from VAT provided for by Article 13A(1)(c) of the Sixth Directive. That outcome follows clearly from the judgments in Case 353/85 *Commission v United Kingdom* [1988] ECR 817, and in *D. v W.*

18 The Court confirmed in *Commission v United Kingdom*, cited above, that the expression *soins à la personne* used in the French text of Article 13A(1)(c) of the Sixth Directive has a different meaning and a narrower scope than the expression *soins médicaux* used in the French text of subparagraph (b) thereof. Even if the expression *medical care* is used both in Article 13A(1)(b) and (c) in the English language version of the Sixth Directive, the Court rejected the argument based on that fact by the United Kingdom Government to establish that the scope of the exemptions provided in the two provisions was parallel.

19 The appellants also point out that in *D. v W.* the Court held that medical services consisting, not in providing care to persons by diagnosing and treating a disease or any other health disorder, but in establishing the genetic affinity of individuals through biological tests, are outside the application of the exemption provided for by Article 13A(1)(c) of the Sixth Directive.

20 They submit also that in Case C-76/99 *Commission v France* [2001] ECR I-249 the Court accorded decisive importance to the therapeutic aim for which the services in question were rendered by the laboratories.

21 According to the appellants, the words of the relevant exemption require, first, that the services be performed in the exercise of the medical and paramedical professions and that, secondly, such services involve the provision of medical care. In the main proceedings, there is no doubt that the first requirement is satisfied. The said services are supplied by Dr d'Ambrumenil in his capacity as a doctor. However, the second requirement is not satisfied, because such services do not involve the provision of any medical care.

22 The appellants submit that, if the expression *medical care* should be understood as referring to all services that are provided in the course of the exercise of the medical profession, the second requirement would be without purpose. Article 13A(1)(c) of the Sixth Directive would simply have exempted services supplied by doctors in their professional capacity. In that context, they draw the Court's attention to the fact that the wording of that provision is different from that of subparagraph (e), which exempts services supplied by dental technicians in their professional capacity.

23 The words *medical care* necessarily connote an activity designed to protect human health and involve care of a patient, which is consistent with a purposive construction of Article 13A of the Sixth Directive. The exemption is designed to facilitate the protection of human health, which includes diagnosis and examination for the purpose of ascertaining whether a person is suffering from a medical condition with a view to treating it if that is possible. It does not include diagnosis and examination if done for some other purpose, such as that of determining the premium payable on an insurance policy.

24 The appellants submit that none of the services described in the order for reference are provided for the purpose of protecting a person's health or curing or treating any medical condition.

25 Medical examinations and the taking of blood or other bodily samples carried out to test for the presence of viruses, infections or other diseases for employers or insurance companies have no therapeutic purpose. They are carried out for the purposes of determining a person's suitability for employment or the premium payable under an insurance contract.

26 Examinations carried out in order to certify a person's fitness to travel are carried out simply in order to determine whether the person can travel or not, and not for the purpose of treating any health problem. Similarly, certifying a person's medical condition for the purpose of entitlement to a war pension is simply for the purposes of determining whether that person is entitled to such a pension or not.

27 Medical examinations carried out and reports prepared for the purposes of litigation likewise cannot, according to the appellants, be described as medical care. They are only directed at determining the compensation, if any, to which the person concerned is entitled.

28 The United Kingdom Government submits that Article 13A(1)(c) of the Sixth Directive is to be interpreted as covering the services described in the question referred when performed in the exercise of the medical profession as defined by the Member State.

29 The Government points out that this case raises issues which overlap with those in Case C-212/01 *Unterpertinger* . All the services in question in the two cases are provided by medically skilled persons in order to give an opinion on a person's state of health. The difference between the present case and *Unterpertinger* is that this case does not involve the services of an expert appointed by a court.

30 According to the United Kingdom Government, the activities to which the question referred relates include typical functions of the medical profession, such as performing a medical examination to determine the state of health of a person ? which means, in effect, to make a medical diagnosis. Those functions plainly fall within the scope of the exemption in Article 13A(1)(c) of the Sixth Directive. As in the *Unterpertinger* case, the issue raised by the national tribunal is whether that conclusion is altered either because of the purpose for which the diagnosis and/or the examination are requested or because of the identity of the person commissioning them. The United Kingdom Government submits that no sensible distinction can be drawn upon either of those bases.

31 The Government points out that, at paragraphs 21 and 23 of the judgment in *Commission v France* , cited above, the Court held that while VAT exemptions are to be construed strictly, Article 13A(1)(b) of the Sixth Directive is not to be construed unduly narrowly, since the exemption is designed to ensure that the benefits of medical and hospital care are not hindered by the increased costs of such care that would follow if they were subject to VAT. According to the United Kingdom Government, a similar purpose underlies Article 13A(1)(c).

32 The United Kingdom Government submits, further, that the interpretation of the words medical care must take into account the fact that the activities performed in the exercise of the medical and paramedical professions are wide-ranging, and extend beyond simply treating sick patients. It is appropriate to refer in that regard to the description of the functions of the medical profession in Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993 L 165, p. 1). The Court indicated in Case C-349/96 *Card Protection Plan* [1999] ECR I-973 (hereinafter *CPP*), paragraph 18, that the terms used in the Sixth Directive can be construed by taking into account their meaning in other Community directives. In the submission of the United Kingdom, the definition of medical care for the purposes of the Sixth Directive must at all events include giving advice such as that referred to in Directive 93/16.

33 In the Government's submission, between the providing of medical treatment *stricto sensu* and the giving of general advice on health lie a range of other activities which are central to the activity of the medical profession but are not directly concerned with treating diagnosed illnesses. Such activities include, for example, prophylactic medicine, such as vaccination and immunisation, various forms of medical intervention concerned with human fertility and childbearing, and cosmetic surgery.

34 The United Kingdom Government observes that, as is evident from Directive 93/16, an important aspect of the prevention of illness and the protection of general health is the performance of periodic health checks on individuals in order to detect the early stages of disease or confirm their absence. The VAT treatment of such an examination could not sensibly differ according to its result or whether or not it led to medical treatment *stricto sensu*. Furthermore, the increased cost of such examinations if they were subject to VAT would be contrary to the purpose referred to by the Court in paragraph 23 of its judgment in *Commission v France*, cited above.

35 The United Kingdom Government examines also the relevance for the reply to the question referred of certain judgments of the Court relied upon by the appellants before the national tribunal. It submits that the proceedings which gave rise to the judgment in *Commission v United Kingdom*, cited above, did not concern services but the question whether the exemption provided for by Article 13A(1)(c) of the Sixth Directive covers supplies of goods. Furthermore, the description in paragraph 33 of that judgment of the services of doctors exempted under that article was not intended to be exhaustive. The Court cannot have intended, by referring to services supplied outside hospitals and within the framework of a confidential relationship between doctor and patient, to deprive of the benefit of the exemption consultations invoiced to a hospital by an outside doctor who had provided services in that hospital. The existence of a particular degree of confidence between the doctor and the patient could not be the criterion for the application of the exemption.

36 The United Kingdom Government points out that the judgment in Case 122/87 *Commission v Italy* [1988] ECR 2685, in which the Court held that the exemption under Article 13A(1)(c) of the Sixth Directive does not cover veterinary treatment, says nothing about the field of application of that article to human health. Case C-145/96 *von Hoffmann* [1997] ECR I-4857, concerning the application of VAT to an arbitrator's services, raised entirely different questions from those raised by this case.

37 With regard to the judgment in *D. v W.*, cited above, the United Kingdom Government submits that the Court was concerned to stress that Article 13A(1)(c) of the Sixth Directive relates to medical activities in the area of human health and that the activity in point in that case had nothing to do with human health. The formulation in paragraph 18 of that judgment could exclude from the exemption under that provision certain functions carried out every day by doctors or members of the paramedical professions. It submits, however, that it is unlikely that the Court intended to exclude from exemption activities such as vaccination performed by doctors or the advisory functions in connection with the prevention of disease and the protection of health referred to in the preamble to Directive 93/16.

38 At all events, the Government avers that the activities at issue in the main proceedings ? unlike those which gave rise to the judgment in *D. v W.* ? are concerned with the diagnosis of diseases or health disorders. Paragraph 18 of that judgment confirms that medical diagnosis does fall within the exemption under Article 13A(1)(c) of the Sixth Directive.

39 The United Kingdom Government argues that all of the activities described in the decision to refer involve making a medical diagnosis for the purpose of being communicated to a third party, such as an employer or an insurance company, at the request of either that third party or the patient himself. Furthermore, the question referred states that certain activities do not involve a physical examination of the patient, but only the consideration of medical notes. The United Kingdom Government contends that the

exemption must cover the activity of using medical skill in all cases, since the preparation of the report which contains the diagnosis is inseparable from the conduct of the examination of a person or the consideration of notes relating to his state of health.

40 The United Kingdom Government also submits that no sensible or workable distinction can be drawn between services falling within and outside the exemption on the basis of the reasons for which a medical diagnosis is sought. It would clearly not be right for the tax treatment of the service to vary either according to the results of the medical examination or according to the reason for which the service was sought. It is plainly in the public interest that people should not be deterred from participating in, for example, cancer screening programmes; to subject such services to VAT on the grounds that the participants were in fact in good health would be contrary to the purpose of the exemption concerned.

41 Similarly, according to the United Kingdom Government, whether the service is ordered by the patient or some other person cannot affect the tax treatment of medical care. Parents commonly commission medical care for their children and employers arrange medical care for their staff, particularly in the form of medical check-ups. There is no reason why these services should be burdened with VAT on the ground that they have been commissioned by someone other than the patient. Again, any such distinction could easily be circumvented.

42 The United Kingdom Government goes on to lay emphasis on the fact that, although a number of the exemptions in Articles 13A and 13B of the Sixth Directive are dependent on the identity of the supplier or the recipient of goods or services, no condition as to the identity of the recipient of the service has been introduced into Article 13A(1)(c) of that directive. The Court has in the past excluded the introduction of restrictions upon the identity of the supplier or recipient of an exempt service, where no such restriction is found in the relevant exempting provisions themselves (Case C-281/91 *Muys' en De Winter's Bouw- en Aannemingsbedrijf* [1993] ECR I-5405, paragraph 13, and Case C-2/95 *SDC* [1997] ECR I-3017, paragraph 32).

43 The United Kingdom Government observes that the intrinsic nature of a service falling within Article 13A(1)(c) does not alter according to who commissions it. To hold that it applies only to services commissioned by the patient himself would be, in the words of the Court in paragraph 56 of the judgment in *SDC*, cited above, to restrict the exemption in a way which is not supported by the wording of the provision in question.

44 The Commission agrees in part with the submissions made by the Commissioners of Customs and Excise before the national tribunal and in part with those made by the appellants. Having recalled the Court's case-law on the interpretation of the exemptions contained in Article 13 of the Sixth Directive, in particular with regard to Article 13A(1)(c), the Commission acknowledges that the identity of the person who requests a medical examination is not decisive in determining the tax treatment of that service. By contrast, it does not agree with the emphasis laid by the Commissioners of Customs and Excise on the use of medical knowledge. The Commission submits, as do the appellants, that the meaning of medical care is narrower than the activity of the medical profession in general. For that reason, Directive 93/16 does not appear to be of any assistance in answering the question referred.

45 The Commission points out that medical practitioners do not enjoy a general exemption from VAT and that, in principle, they are taxable persons under Article 4(2) of the Sixth Directive in the same way as other professionals who provide services. It is only the provision of medical care which is exempted. The Commission contends that the national tribunal was right to say in its preliminary decision of 16 March 1999 that medical care is the provision of services in a doctor/patient relationship directed in general to the physical and mental health of that person. That definition corresponds to the notion of therapeutic aim referred to in the Court's case-law.

46 In the light of those criteria, the Commission submits that medical examinations and the preparation of reports on the state of health of an alleged victim of personal injury or medical error do not constitute medical care, at least where the service provider is not the victim's own physician. Such examinations are directed, instead, at determining the cause and extent of an injury. They have no direct relationship to the medical treatment of that injury. Consequently, the taxation of such services has no negative impact on access to health care.

47 According to the Commission, the same may be said in relation to the preparation of certificates concerning, for example, fitness to travel, or certificates concerning a person's medical condition for purposes such as entitlement to a war pension. Such services have no relation to the treatment of a medical condition or indeed the provision of health advice. The Commission points out, in that regard, that the Commissioners of Customs and Excise accepted that the provision of certain types of certificates was a taxable supply for VAT purposes.

48 The Commission admits nevertheless that, in certain cases, certificates of fitness to travel or to participate in sports are given by the person's usual physician in the course of a routine consultation such as a periodic medical check-up or as an adjunct to ongoing medical care. In such circumstances, the Commission maintains that the provision of the medical certificate must be regarded as merely ancillary to the main purpose of the service, which is the medical care of the person concerned. Although it does not appear that Dr d'Ambrumenil's activities, as described in the decision to refer, satisfy those conditions, a question of fact of that kind is a matter for the national tribunal.

49 In so far as medical examinations and the taking of blood or other samples at the request of employers or insurers are concerned, the Commission submits that services of that type, which are elements in the decision-making process of the employer or insurer, should be considered as subject to VAT, in particular where they are carried out by a doctor chosen by the employer or insurer. They are not intended to further the medical care of the person concerned and imposing VAT on them has no impact on access to medical care.

50 Nevertheless, where the person concerned is at liberty to have the examinations carried out by his own physician, the Commission considers it possible that they may be regarded as forming part of the ongoing medical care of the patient.

51 As for periodic medical checks carried out at the request of an employer or an insurer, the Commission maintains that they promote the proper health care of those concerned. Therefore, while such checks are carried out in the interest of the employer or insurer, they have a therapeutic purpose and thus fall within the terms of Article 13A(1)(c). Those checks, as well as the taking of blood and other samples in connection therewith, enable the persons concerned to discuss their state of health with the doctor and to receive the appropriate advice. There is, in that situation, a relationship of doctor and patient which may not arise in the case of examinations requested solely for the purpose of determining aptitude for employment or assessing an insurance risk.

The Court's reply

52 According to the Court's case-law, the exemptions envisaged in Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, in particular, *SDC*, cited above, paragraph 20, and Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 28). Those exemptions constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another (*CPP*, cited above, paragraph 15, and *Commission v France*, cited above, paragraph 21).

53 As the Commission has correctly observed, Article 13A(1)(c) does not exempt all the services which may be effected in the exercise of the medical and paramedical professions, but only provision of medical care, which constitutes an independent concept of Community law. It follows that services effected in the exercise of those professions

remain subject to the general rule making them subject to VAT set out in Article 2(1) of the Sixth Directive, if they do not correspond to the concept of the provision of medical care, or to the terms of any other exemption provided for by that directive.

54 Even if other services provided by doctors may share the characteristics of activities in the public interest, it follows from the Court's case-law that Article 13A of the Sixth Directive does not exempt from VAT every activity performed in the public interest, but only those which are listed and described in great detail (Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 18, and *D. v W.* , paragraph 20).

55 The United Kingdom Government's argument seeking to extend the scope of the exemption under Article 13A(1)(c) to all the activities normally included in the functions of doctors and to which Directive 93/16 refers should therefore be rejected. The objectives pursued by that directive, which is intended to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, require that the activities of doctors be therein described in such a way as to cover all of their activities in the various Member States, whereas the definition of the activities covered by that exemption, which creates an exception to the principle of subjection to VAT, fulfils different objectives.

56 It should be noted, furthermore, that the fact that the same persons may provide both services exempted from VAT and services subject to that tax does not constitute an anomaly in the context of the system of deduction put in place by the Sixth Directive, since Articles 17(5) and 19 thereof specifically govern that situation.

57 In relation to the concept of provision of medical care, the Court has already held in paragraph 18 of its judgment in *D. v W.* , and restated in paragraph 38 of its judgment in *Kügler* , cited above, that that concept does not lend itself to an interpretation which includes medical interventions carried out for a purpose other than that of diagnosing, treating and, in so far as possible, curing diseases or health disorders.

58 While it follows from that case-law that the provision of medical care must have a therapeutic aim, it does not necessarily follow therefrom that the therapeutic purpose of a service must be confined within an especially narrow compass (see, to that effect, *Commission v France* , paragraph 23). Paragraph 40 of the judgment in *Kügler* shows that medical services effected for prophylactic purposes may benefit from the exemption under Article 13A(1)(c). Even in cases where it is clear that the persons who are the subject of examinations or other medical interventions of a prophylactic nature are not suffering from any disease or health disorder, the inclusion of those services within the meaning of provision of medical care is consistent with the objective of reducing the cost of health care, which is common to both the exemption under Article 13A(1)(b) and that under (c) of that paragraph (see *Commission v France* , paragraph 23, and *Kügler* , paragraph 29).

59 On the other hand, medical services effected for a purpose other than that of protecting, including maintaining or restoring, human health may not, according to the Court's case-law, benefit from the exemption under Article 13A(1)(c) of the Sixth Directive. Having regard to their purpose, to make those services subject to VAT is not contrary to the objective of reducing the cost of health care and of making it more accessible to individuals.

60 As the Advocate General correctly pointed out in paragraphs 66 to 68 of her Opinion, it is the purpose of a medical service which determines whether it should be exempt from VAT. Therefore, if the context in which a medical service is effected enables it to be established that its principal purpose is not the protection, including the maintenance or restoration, of health but rather the provision of advice required prior to the taking of a decision with legal consequences, the exemption under Article 13A(1)(c) does not apply to the service.

61 Where a service consists of making an expert medical report, it is clear that, although the performance of that service solicits the medical skills of the provider and may involve activities which are typical of the medical profession, such as the physical examination of the patient or the analysis of his medical history, the principal purpose of such a service is not the protection, including the maintenance or restoration, of the health of the person to

whom the report relates. Such a service, whose purpose is to provide a reply to questions set out in the request for the report, is effected in order to enable a third party to take a decision which has legal consequences for the person concerned or other persons. While it is true that an expert medical report may also be requested by the person concerned and may indirectly contribute to the protection of the health of such person, by detecting a new problem or by correcting a previous diagnosis, the principal purpose pursued by every service of that type remains that of fulfilling a legal or contractual condition in another's decision-making process. Such a service cannot benefit from the exemption under Article 13A(1)(c).

62 It follows that supplies of services such as those described in paragraphs (d) to (h) of the question referred, although effected in the exercise of the medical profession, do not constitute the provision of medical care within the meaning of Article 13A(1)(c). The purpose of such services is to provide expert reports concerning a person's state of health and covering, in particular, the injuries or disabilities by which he or she is affected, in order to treat administrative applications, such as applications for the payment of a war pension, or for the purposes of court proceedings for compensation, such as claims for damages for medical negligence.

63 In relation to services consisting in the provision of medical certificates of fitness, for example certificates of fitness to travel as mentioned in paragraph (c) of the question referred, it is necessary to take into consideration the context in which those services are performed in order to establish their principal purpose.

64 Where fitness certificates are required by a third party as a condition precedent to the exercise by the person concerned of a particular professional activity or the practice of certain activities requiring a sound physical condition, the principal purpose of the service effected by the doctor is to provide the third party with a necessary element for taking a decision. Such medical services are not intended principally to protect the health of the persons who wish to carry on certain activities and cannot therefore be exempt under Article 13A(1)(c).

65 None the less, where the purpose of a certificate relating to physical fitness is to make clear to a third party that a person's state of health imposes limitations on certain activities or requires that they are carried on under particular conditions, the protection of the health of the person concerned may be regarded as the principal purpose of that service. Therefore, the exemption under Article 13A(1)(c) may apply to such a service.

66 Considerations similar to those set out in paragraphs 63 to 65 of this judgment apply in relation to the services described in paragraphs (a) and (b) of the question referred. Where medical examinations and the taking of blood or other bodily samples are carried out with the aim of enabling an employer to take decisions on the recruitment of, or on the duties to be performed by, a worker or to enable an insurance company to fix the premium to be paid by an insured person, the services in question are intended principally to provide that employer or that insurance company with evidence on which to take its decision. Such services do not therefore come within the meaning of provision of medical care exempted under Article 13A(1)(c).

67 By contrast, regular medical checks at the behest of certain employers and certain insurance companies may satisfy the conditions for exemption under Article 13A(1)(c), provided that such checks are intended principally to enable the prevention or detection of illness or the monitoring of the health of workers or insured persons. The fact that such medical checks take place at a third party's request, and may also serve the employers' or insurance companies' own interests, does not preclude health protection being regarded as the principal aim of such checks.

68 In view of the foregoing, the reply to the question referred must be that Article 13A(1)(c) of the Sixth Directive is to be interpreted as meaning that the exemption from VAT under that provision applies to medical services consisting of:

? conducting medical examinations of individuals for employers or insurance companies,
? the taking of blood or other bodily samples to test for the presence of viruses, infections or other diseases on behalf of employers or insurers, or
? certification of medical fitness, for example, as to fitness to travel,
where those services are intended principally to protect the health of the person concerned.

69 The said exemption does not apply to the following services, performed in the exercise of the medical profession:

? giving certificates as to a person's medical condition for purposes such as entitlement to a war pension,
? medical examinations conducted with a view to the preparation of an expert medical report regarding issues of liability and the quantification of damages for individuals contemplating personal injury litigation,
? the preparation of medical reports following examinations referred to in the previous indent and medical reports based on medical notes without conducting a medical examination,
? medical examinations conducted with a view to the preparation of expert medical reports regarding professional medical negligence for individuals contemplating litigation,
? the preparation of medical reports following examinations referred to in the previous indent and medical reports based on medical notes without conducting a medical examination.

Costs

70 The costs incurred by the United Kingdom Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national tribunal, the decision on costs is a matter for that tribunal.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the VAT and Duties Tribunal, London, by decision of 6 June 2001, hereby rules:

1. Article 13A(1)(c) of 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, is to be interpreted as meaning that the exemption from VAT under that provision applies to medical services consisting of:

? conducting medical examinations of individuals for employers or insurance companies,
? the taking of blood or other bodily samples to test for the presence of viruses, infections or other diseases on behalf of employers or insurers, or
? certification of medical fitness, for example, as to fitness to travel,
where those services are intended principally to protect the health of the person concerned.

2. The said exemption does not apply to the following services, performed in the exercise of the medical profession:

? giving certificates as to a person's medical condition for purposes such as entitlement to a war pension,
? medical examinations conducted with a view to the preparation of an expert medical report regarding issues of liability and the quantification of damages for individuals contemplating personal injury litigation,
? the preparation of medical reports following examinations referred to in the previous indent and medical reports based on medical notes without conducting a medical examination,

? medical examinations conducted with a view to the preparation of expert medical reports regarding professional medical negligence for individuals contemplating litigation,
? the preparation of medical reports following examinations referred to in the previous indent and medical reports based on medical notes without conducting a medical examination.

Rosas

Edward

La Pergola

Delivered in open court in Luxembourg on 20 November 2003.

R. Grass

V. Skouris

Registrar

President

1 – Language of the case: English.