Arrêt de la Cour
Case C-321/02

Finanzamt Rendsbug

v

Detlev Harbs

(Reference for a preliminary ruling from the Bundesfinanzhof)

(Sixth VAT Directive – Article 25 – Common flat-rate scheme for farmers – Leasing of part of a farm)

Summary of the Judgment

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Common flat-rate scheme for farmers – Scope – Leasing of part of a farm – Exclusion

(Council Directive 77/388, Art. 25)

Article 25 of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, which confers on the Member States the right to apply a common flat-rate scheme to farmers where the application to them of the normal VAT scheme or the simplified tax scheme would give rise to difficulties, is to be interpreted as meaning that a farmer who has leased and/or let on a long-term basis some of the material assets of his farming business but continues to farm with the rest of his assets and who, in respect of the continued farming activity, is subject to the common flat-rate scheme provided for in that article may not treat the income from such a lease and/or letting as being taxable under that scheme. The turnover from that arrangement must be taxed under the normal VAT scheme or, where appropriate, the simplified scheme.

Application of the scheme is not dependent on satisfaction of a sole criterion, namely the formal status of farmer, but is reserved to farmers whose situation is covered by all the provisions of Article 25 of the Sixth Directive.

Letting can be included in the services referred to in that provision only if it concerns equipment that the farmer normally uses in farming his own agricultural land. It follows that the letting, leasing or creation of a usufructuary right by which a farmer transfers exclusive enjoyment of immovable property to another farmer, with the result that the latter may enjoy the fruits of that property, does not fall within the scope of Article 25, because the transferring farmer can then no longer regularly use the assets concerned. For the same reason, this must also apply in the case of the long-term letting of other objects of the farm to which the lessee has exclusive rights of enjoyment.

(see paras 27, 31, 34, 37, operative part)

JUDGMENT OF THE COURT (First Chamber)
15 July 2004(1)

(Sixth VAT Directive – Article 25 – Common flat-rate scheme for farmers – Leasing of part of a farm)

In Case C-321/02,
REFERENCE to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between
Finanzamt Rendsburg

and

Detlev Harbs,
on the interpretation of Article 25 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 (First Chamber),,

composed of: P. Jann, President of the Chamber, A. Rosas, S. von Bahr (Rapporteur), R. Silva de Lapuerta and K. Lenaerts, Judges,
Advocate General: P. Léger,
Registrar: R. Grass,
after considering the written observations submitted on behalf of:

– Mr Harbs, represented by G. Flock and U. Fischer, Rechtsanwälte,
– the German Government, represented by W.-D. Plessing and M. Lumma, acting as Agents,
– the Commission of the European Communities, represented by E. Traversa and K. Gross, acting as Agents, assisted by A. Böhlke, Rechtsanwalt,
after hearing the oral observations of Mr Harbs and the Commission at the hearing on 12 February 2004,

after hearing the Opinion of the Advocate General at the sitting on 11 March 2004,

gives the following

Judgment

1 By order of 4 July 2002, received at the Court on 13 September 2002, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 25 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 Sixth Directive’).
2 That question was raised in proceedings between Mr Harbs and the Finanzamt Rendsburg (Germany) (Rendsburg Tax Office, ‘the Finanzamt’) concerning the application of the common flat-rate scheme for farmers provided for in Article 25 of the Sixth Directive to income from the leasing by Mr Harbs of certain assets of his farm.

Legal background

Community law

3 Article 13B(b) of the Sixth Directive provides:

'Without prejudice to other Community provisions, Member States shall exempt the following …:

(b) the leasing or letting of immovable property …'.

4 Article 25 of the Sixth Directive, which is entitled 'Common flat-rate scheme for farmers', provides:

'1. Where the application to farmers of the normal value added tax scheme, or the simplified scheme provided for in Article 24, would give rise to difficulties, Member States may apply to farmers a flat-rate scheme tending to offset the value added tax charged on purchases of goods and services made by the flat-rate farmers pursuant to this Article.

2. For the purposes of this Article, the following definitions shall apply:

–"farmer": a taxable person who carries on his activity in one of the undertakings defined below,

–"agricultural, forestry or fisheries undertakings": an undertaking considered to be such by each Member State within the framework of the production activities listed in Annex A,

–"flat-rate farmer": a farmer subject to the flat-rate scheme provided for in paragraphs 3 et seq.,

–"agricultural products": goods produced by an agricultural, forestry or fisheries undertaking in each Member State as a result of the activities listed in Annex A,

–"agricultural service": any service as set out in Annex B supplied by a farmer using his labour force and/or by means of the equipment normally available on the agricultural, forestry or fisheries undertaking operated by him,

–"value added tax charge on inputs": the amount of the total value added tax attaching to the goods and services purchased by all agricultural, forestry and fisheries undertakings of each Member State subject to the flat-rate scheme where such tax would be deductible under Article 17 by a farmer subject to the normal value added tax scheme,

–"flat-rate compensation percentages": the percentages fixed by Member States in accordance with paragraph 3 and applied by them in the cases specified in paragraph 5 to enable flat-rate farmers to offset at a fixed rate the value added tax charge on inputs,

–"flat-rate compensation": the amount arrived at by applying the flat-rate compensation percentage provided for in paragraph 3 to the turnover of the flat-rate farmer in the cases referred to in paragraph 5.

3. Member States shall fix the flat-rate compensation percentages, where necessary, and shall notify the Commission before applying them. Such percentages shall be based on macro-economic statistics for flat-rate farmers alone for the preceding three years. They may not be used to obtain for flat-rate farmers refunds greater than the value added tax charges on inputs. Member States shall have the option of reducing such percentages to a nil rate. The percentage may be rounded up or down to the nearest half point.

Member States may fix varying flat-rate compensation percentages for forestry, for the different sub-divisions of agriculture and for fisheries.

…

5. The flat-rate percentages provided for in paragraph 3 shall be applied to the price, exclusive of tax, of the agricultural products and agricultural services supplied by the flat-rate farmers to taxable persons other than a flat-rate farmer. This compensation shall exclude all other forms of deduction.

6. Member States may provide for the flat-rate compensation to be paid:

(a) either by the taxable person to whom the goods or services are supplied. In this case, the taxable person to whom the goods or services are supplied shall be authorised, following the procedure laid down by the Member States, to deduct from the value added tax for which he is liable, the amount of the flat-rate compensation he has paid to the flat-rate farmers;

(b) or by the public authorities.

…

8. As regards all supplies of agricultural products and agricultural services other than those covered by paragraph 5, the flat-rate compensation is deemed to be paid by the purchaser or customer.

…

10. Every flat-rate farmer may opt, subject to the rules and conditions to be laid down by each Member State, for application of the normal value added tax scheme or, as the case may be, the simplified scheme provided for in Article 24(1).

…'

5 Annex A to the Sixth Directive provides:

'List of agricultural production activities:

I. Crop production

1. General agriculture, including viticulture;

…

II. Stock farming together with cultivation

1. General stock farming;

…

III. Forestry

IV. Fisheries

…

V. Where a farmer processes, using means normally employed in an agricultural, forestry or fisheries undertaking, products deriving essentially from his agricultural production, such processing shall also be regarded as agricultural production.'

6 Annex B to the Sixth Directive is worded as follows:

'List of agricultural services

Supplies of agricultural services which normally play a part in agricultural production shall be considered the supply of agricultural services, and include the following in particular:

– field work, reaping and mowing, threshing, baling, collecting, harvesting, sowing and planting

– packing and preparation for market, for example drying, cleaning, grinding, disinfecting and ensilage of agricultural products

– storage of agricultural products

– stock minding, rearing and fattening

– hiring out, for agricultural purposes, of equipment normally used in agricultural, forestry or fisheries undertakings

– technical assistance

– destruction of weeds and pests, dusting and spraying of crops and land

– operation of irrigation and drainage equipment

– lopping, tree felling and other forestry services.'

National law

7 Under German law, the flat-rate compensation scheme provided for in Article 25 of the Sixth Directive is implemented by Paragraph 24 of the Umsatzsteuergesetz 1991 (Law on turnover tax, 'the UStG') in the version in force at the time of the facts at issue in the main case.

The main proceedings and the question referred for a preliminary ruling

8 In 1992, Mr Harbs was the owner of a farm comprising, in addition to land of 92 hectares and farm buildings, livestock of approximately 60 fattening bulls, 65 dairy cows and 120 other cattle. He received a milk reference quantity (milk quota) of 321 367 kg.

9 By virtue of two agreements of 12 November 1992, Mr Harbs leased part of his farm to his son, for consideration, from 15 November 1992 to 30 June 2005. First, by way of a 'farm lease', he leased to his son land of approximately 31 hectares, the 65 milk cows and his milk quota. Secondly, by way of an 'agreement for the use of animal sheds', he let to his

son a cowshed containing 75 spaces. Mr Harbs continued to farm the rest of his agricultural land.

10 Mr Harbs took the view that the consideration agreed under the farm lease was taxable at the average rates provided for in Paragraph 24 of the UStG and that, under that paragraph, the tax on the turnover from a farming business is offset by input tax of a corresponding amount, with the result that there is no tax to be levied. He therefore did not declare any taxable turnover for the 1992 financial year in the tax statement of 20 January 1995 which he had been asked to submit.

11 The Finanzamt considered that, whilst the lease of the land and the building was exempt from tax under German law, the turnover achieved by Mr Harbs in 1992 from the leasing of the milk quota and the dairy cows did not arise from farming within the meaning of Paragraph 24 of the UStG and, accordingly, had to be taxed under the general provisions of the UStG. It therefore charged turnover tax on the net amount of the consideration paid for that lease and, on 10 July 1996, it issued a tax notice for DEM 361.

12 His objection having been dismissed, Mr Harbs brought an action before the Finanzgericht Schleswig-Holstein (Schleswig-Holstein Finance Court) (Germany), which held the action to be well founded. The Finanzamt appealed on a point of law ('Revision') to the Bundesfinanzhof.

13 Taking the view that, in order to reach a decision in the main case, it is necessary to interpret Article 25 of the Sixth Directive, the Bundesfinanzhof decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Where the owner of a farm:

– gives up part of his farm (the entire dairy cow operation) and leases the assets necessary for that operation to another farmer;

– and continues to farm on a not insignificant scale after granting the lease,

may he treat the turnover from the lease – like the rest of his turnover – under the flat-rate scheme for farmers (Article 25 of Directive 77/388/EEC), or is the turnover from the lease taxable under the general rules?'

The question referred for a preliminary ruling

14 By its question, the national court is asking, essentially, whether Article 25 of the Sixth Directive is to be interpreted as meaning that a farmer who has leased and/or let part of his farm but continues his farming activity on the rest of his farm and who, in respect of the continued farming activity, is subject to the common flat-rate scheme provided for in Article 25 may treat the income from the leasing arrangement as being taxable under that scheme or whether that income must be taxed under the general scheme of value added tax ('VAT').

Observations submitted to the Court

15 According to Mr Harbs, Paragraph 24(1) of the UStG does not provide that turnover from the letting or leasing of certain assets is subject to the general taxation scheme. Nor, under that paragraph, must a farmer who lets or leases specific items of his farm property apply the flat-rate compensation percentage when he supplies that service to another flat-rate farmer since the compensation for the input VAT paid is deemed to be included in the total price of the services.

16 Mr Harbs submits that the Bundesfinanzhof has itself held in its case-law that only in the event that the farmer leases his entire farm does he cease to run an agricultural undertaking for the purposes of Paragraph 24 of the UStG.

17 Moreover, he claims that he is indisputably a farmer within the meaning of Article 25 of the Sixth Directive because he continues to exercise the activities referred to in Annex A to that directive and his status as such cannot be affected by the letting or leasing of certain items of farm property. In addition the flat-rate scheme provided for in Article 25 of the Sixth Directive is applicable to the price of 'agricultural services', which, under the fifth indent of Annex B, comprise those which, as in the main case, play a part in agricultural production, including the 'hiring out, for agricultural purposes, of equipment normally used

in agricultural … undertakings'. Article 25 of and Annex B to the Sixth Directive do not require that the farmer himself also and simultaneously use in his agricultural undertaking the assets transferred 'for use'. Finally, under Article 6(1) of the Sixth Directive, the lease is a supply of services.

18 According to the German Government, the income from the lease is not taxable under the common flat-rate scheme for farmers provided for in Article 25 of the Sixth Directive. It is subject to the general turnover-tax scheme.

19 The 'hiring out, for agricultural purposes, of equipment normally used in agricultural, forestry or fisheries undertakings' referred to in the fifth indent of Annex B to the Sixth Directive does not cover the leasing of part of a farm. Unlike a single service consisting of the hiring out of the mere use of specific assets, such a leasing arrangement comprises a package of complex services for the benefit of a lessee to whom not only that use but also the usufruct is transferred.

20 Moreover, the Sixth Directive distinguishes very clearly between the two legal categories of letting and leasing, as is apparent from a comparison of the provisions of Annex B and Article 13B(b). In addition, since leasing is by no means unusual in agriculture, the Community legislature would not have omitted to include it in Annex B if it had intended that it should be covered by the flat-rate scheme.

21 The fact that Annex B contains only examples of agricultural services and is therefore not exhaustive does not mean that leasing can be brought within that annex. Such an inclusion, in so far as it relates to the leasing of land, would render incoherent the system established by the Sixth Directive, which, under Article 13B(b), exempts the letting and leasing of immoveable property. Moreover, in the same way as any scheme permitting exceptions, the scheme under Article 25 of the Sixth Directive must be applied according to a strict interpretation of that article and of Annex B. Finally, to include leasing in the flat-rate scheme under Article 25 would risk giving rise to 'overcompensation' contrary to the provisions of the Sixth Directive, which place the Member States under an obligation to fix such flat-rate compensation percentages as cannot be used to obtain for flat-rate farmers refunds greater than the VAT charges.

22 In the German Government's view, the origin of Article 25 of the Sixth Directive confirms that the letting of part of a farm does not fall within the scope of the flat-rate scheme for which it provides. First, the Commission's Sixth Directive proposal of 29 June 1973 referred, in the fifth indent of Annex B, solely to the 'hiring out of agricultural machinery'. It therefore did not include the letting of land, as is also revealed by the subsequent debates and, in particular, the proposals for amendments then made by the German Government itself. Moreover, the obligation to interpret Article 25 of the Sixth Directive strictly is the consequence of the undertaking entered into by the Member States, which agreed at the time to increase efforts to apply the normal VAT scheme progressively to certain categories of farmer.

23 The Commission takes the view that, given its status as a special scheme, the flat-rate scheme for farmers must be interpreted strictly (see, in respect of the special scheme provided for in Article 26 of the Sixth Directive, Joined Cases C?308/96 and C?94/97 *Madgett and Baldwin* [1998] ECR I-6229).

24 The Commission submits that, although the scheme is based on a formal criterion in so far as it applies to 'farmers', it also serves a function which is to link, pursuant to Article 25(5) of the Sixth Directive, the flat-rate compensation to 'agricultural products' or 'agricultural services'. It points out that, unlike Article 13B(b) of that directive, which refers to both letting and leasing, the list of 'agricultural services' in Annex B to that directive, to which Article 25 refers, does not mention leasing.

25 According to the Commission, whilst Annex B refers, in the list of agricultural services, to 'hiring out, for agricultural purposes, of equipment normally used in agricultural … undertakings', it does not cover the letting of the farm itself or of an independent part of the farm. The 'equipment' referred to is that which is to be used only for agricultural purposes, in so far as it makes such activity possible or facilitates it, such as agricultural machinery,

which, moreover, was the only equipment to have been mentioned in the drafts of the Sixth Directive. Annex A V to that directive refers to that same idea. The other language versions of Annex B are likewise to be understood to that effect.

26 The Commission also points out that, under the fifth indent of Article 25(2) of the Sixth Directive, the agricultural services referred to are those supplied by a farmer 'using his labour force and/or by means of the equipment normally available on the agricultural, forestry or fisheries undertaking operated by him'. That requirement is not satisfied in circumstances, such as those of the main case, in which a farmer ceases to keep a dairy herd and leases it on a long-term basis since the leased assets are no longer used for the lessor's farming activity.

Reply of the Court

27 First of all, it should be observed that Article 25(1) of the Sixth Directive confers on the Member States the right to apply a common flat-rate scheme to farmers where the application to them of the normal VAT scheme, or the simplified scheme provided for in Article 24 of that directive, would give rise to difficulties. That special scheme, which is applicable to certain farmers, is therefore an exception to the general scheme provided for in the Sixth Directive. That it is an exception is, as the Advocate General stated in point 31 of his Opinion, confirmed by the fact that, under Article 25(9) and (10), the Member States may exclude from that scheme certain categories of farmer and that any flat-rate farmer is entitled to opt for application of the normal scheme or the simplified scheme. Like the other special schemes provided for in Articles 24 and 26 of the Sixth Directive, the scheme under Article 25 must therefore be applied only to the extent necessary to achieve its objective (see, in respect of the application of the scheme provided for in Article 26 of the Sixth Directive, *Madgett and Baldwin*, cited above, paragraph 34). Moreover, it is settled case-law that any exception to a general rule is to be interpreted strictly (Case C-83/99 *Commission* v *Spain* [2001] ECR I-445, paragraph 19).

28 It should also be observed that, in determining the scope of a provision of Community law, its wording, context and objectives must all be taken into account (Case C?162/91 *Tenuta il Bosco* [1992] ECR I?5279, paragraph 11, and Case C?315/00 *Maierhofer* [2003] ECR I?563, paragraph 27). Moreover, the need for uniform application of Community law and the principle of equality require that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community; that interpretation must take into account the context of the provision and the purpose of the legislation in question (see, inter alia, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 43; Case C-357/98 *Yiadom* [2000] ECR I-9265, paragraph 26; Case C?373/00 *Adolf Truley* [2003] ECR I?1931, paragraph 35; and Case C?497/01 *Zita Modes* [2003] ECR I?0000, paragraph 34).

29 According to Article 25 of the Sixth Directive, the common flat-rate scheme aims to offset the tax charged on purchases of goods and services made by farmers by way of a flat-rate compensation payment to farmers who carry on their activity in an agricultural, forestry or fisheries undertaking when they supply agricultural products or provide agricultural services. That compensation is calculated by applying a percentage, which has been fixed by the Member States, to the price, excluding tax, of the goods or services supplied by the flat-rate farmer to a taxable purchaser of goods or recipient of services other than a flat-rate farmer. It is paid either by the public authorities or by the taxable purchaser or recipient and excludes any other form of deduction of input VAT.

30 In order to ensure that the scheme is applied uniformly throughout the entire Community, the Community legislature, subject to an explicit reference to the law of the Member States for the purpose of determining the undertakings concerned, made a point of defining, inter alia, 'farmer', 'agricultural products' and 'agricultural services'.

31 The Community legislature thus did not intend to make application of the scheme dependent on satisfaction of a sole criterion, namely the formal status of farmer, but reserved such application to farmers whose situation is covered by all the provisions of Article 25 of the Sixth Directive. Accordingly, the mere fact that a person is a farmer does not mean that he is entitled to have solely that scheme applied to him, irrespective of the nature of the economic transactions effected by him.

32 Under Article 25(2) of the Sixth Directive, the services set out in Annex B that are supplied by a farmer using his labour force and/or by means of the equipment normally available on the agricultural, forestry or fisheries undertaking operated by him are to be treated as agricultural services within the meaning of that article. According to Annex B, services which normally play a part in agricultural production, in particular the 'hiring out, for agricultural purposes, of equipment normally used in agricultural … undertakings', are to be treated as agricultural services.

33 Therefore, no express reference is made to leasing in either Article 25(2) of or Annex B to the Sixth Directive. By contrast, in Article 13B(b), the Community legislature expressly provided that that article is to apply in the case of leasing and also that of letting.

34 Moreover, it is apparent from the fifth indent of Article 25(2) of and Annex B to the Sixth Directive – which, since each refers expressly to the other, must be read in conjunction – that letting can be included in the services referred to in the fifth indent of Article 25(2) only if it concerns equipment that the farmer normally uses in farming his own agricultural land. It follows that, in particular, the letting, leasing or creation of a usufructuary right by which a farmer transfers exclusive enjoyment of immovable property, such as land or buildings, to another farmer, with the result that the latter may enjoy the fruits of that property, does not fall within the scope of the fifth indent of Article 25(2) of the Sixth Directive because the transferring farmer can then no longer regularly use the assets concerned. For the same reason, this must also apply in the case of the long-term letting of other objects of the farm to which the lessee has exclusive rights of enjoyment.

35 Thus, where, in circumstances such as those at issue in the main case, a farmer lets for more than 12 years material assets of his farming business, such as land, a building, cows and the milk quota, and thereby parts with equipment which until then he has used regularly in his dairy business, he cannot be regarded as having supplied a service for the purposes of Article 25(2) of the Sixth Directive.

36 Therefore, such letting does not fall within the scope of the common flat-rate scheme for farmers. The turnover from that activity cannot, therefore, be taxed under the special scheme provided for in Article 25 of the Sixth Directive, even if the farmer concerned continues to rear stock on the rest of his land, and, consequently, it falls within the scope of the normal VAT scheme or, where appropriate, the simplified scheme. Moreover, pursuant to Article 25(10) of the Sixth Directive, the farmer concerned may opt for the normal scheme or, where appropriate, the simplified scheme in respect of all of his activities.

37 In light of the above, the answer to the question referred for a preliminary ruling must be that Article 25 of the Sixth Directive is to be interpreted as meaning that a farmer who has leased and/or let on a long-term basis some of the material assets of his farming business but continues to farm with the rest of his assets and who, in respect of the continued farming activity, is subject to the common flat-rate scheme provided for in Article 25 may not treat the income from such a lease and/or letting as being taxable under that scheme. The turnover from that arrangement must be taxed under the normal VAT scheme or, where appropriate, the simplified VAT scheme.

Costs

38 The costs incurred by the Commission, which has 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 court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Bundesfinanzhof by order of 4 July 2002, hereby rules:

Article 25 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 a farmer who has leased and/or let on a long-term basis some of the material assets of his farming business but continues to farm with the rest of his assets and who, in respect of the continued farming activity, is subject to the common flat-rate scheme provided for in Article 25 may not treat the income from such a lease and/or letting as being taxable under that scheme. The turnover from that arrangement must be taxed under the normal scheme or, where appropriate, the simplified scheme of value added tax.

Jann

Rosas

von Bahr

Silva de Lapuerta

Lenaerts

Delivered in open court in Luxembourg on 15 July 2004.

R. Grass

P. Jann

Registrar

President of the First Chamber

1 – Language of the case: German.