Case C-376/02

Stichting “Goed Wonen”

v

Staatssecretaris van Financiën

(Reference for a preliminary ruling from the Hoge Raad der Nederlanden)

(Turnover tax – Common system of value added tax – Article 17 of Sixth Directive 77/388/EEC – Deduction of input tax – Amendment of national legislation – Retroactive effect – Principles of the protection of legitimate expectations and legal certainty)

Opinion of Advocate General Tizzano delivered on 16 December 2004

Judgment of the Court (Grand Chamber), 26 April 2005.

Summary of the Judgment

1. *Community law — Principles — Non-retroactivity — Exceptions — Conditions — Retroactivity required by purpose in the public interest — Whether the legitimate expectations of those concerned have been respected*

2. *Tax provisions — Harmonisation of laws — Turnover tax — Common system of value added tax – Deduction of input tax — Legislative amendment designed to combat contrived financial arrangements and reintroducing exemption of an economic transaction in respect of immovable property previously subject to tax and having the effect of revoking a tax adjustment — Retroactive effect — Whether permissible in the light of the principles of the protection of legitimate expectations and legal certainty — Conditions*

1. Although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.

The same principle must be observed by the national legislature when it adopts legislation within the sphere of Community law.

(see paras 33-34)

2. The principles of the protection of legitimate expectations and legal certainty do not preclude a Member State, on an exceptional basis and in order to avoid the large-scale use, during the legislative process, of contrived financial arrangements intended to minimise the burden of value added tax that an amending law is specifically designed to combat, from giving that law retroactive effect where, inter alia, economic operators carrying out economic transactions such as those referred to by the law were warned of the impending adoption of that law and of the retroactive effect envisaged in a way that enabled them to understand the consequences of the legislative amendment planned for the transactions they carry out.

When that law exempts an economic transaction in respect of immovable property previously

subject to value added tax, it may have the effect of revoking a value added tax adjustment made on account of the exercise, when immovable property was used for a transaction regarded at that time as taxable, of a right to deduct value added tax paid in respect of the supply of that immovable property.

(see para. 45, operative part)

JUDGMENT OF THE COURT (Grand Chamber)

26 April 2005 (*)

(Turnover tax – Common system of value added tax – Article 17 of Sixth Directive 77/388/EEC – Deduction of input tax – Amendment of national legislation – Retroactive effect – Principles of the protection of legitimate expectations and legal certainty)

In Case C-376/02,

REFERENCE for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 18 October 2002, received at the Court on 21 October 2002, in the proceedings

Stichting ‘Goed Wonen’

v

Staatssecretaris van Financiën,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas (Rapporteur), R. Silva de Lapuerta and A. Borg Barthet, Presidents of Chambers, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, P. K?ris, E. Juhász, G. Arestis and M. Ileši?, Judges,

Advocate General: A. Tizzano,

Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 October 2004,

after considering the observations submitted on behalf of:

– Stichting ‘Goed Wonen’, by G. Vos, belastingsadviseur,

– the Netherlands Government, by H.G. Sevenster and S. Terstal, acting as Agents,

– the Swedish Government, by A. Kruse, acting as Agent,

– the Commission of the European Communities, by E. Traversa and D.W.V. Zijlstra, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2004,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 17 and 20 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') and the principles of the protection of legitimate expectations and legal certainty.

2 The reference was made in proceedings between the Stichting 'Goed Wonen', a Netherlands foundation, and the Staatssecretaris van Financiën (State Secretary for Finance) regarding an additional assessment issued by the Inspector of Taxes concerning the value added tax ('VAT') declared by that foundation in respect of the period from 1 April to 30 June 1995. That dispute has already given rise to a judgment of the Court on another question referred for a preliminary ruling by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) (Case C-326/99 '*Goed Wonen'* [2001] ECR I-6831).

Relevant provisions

Community provisions

3 Article 17 of the Sixth Directive provides:

'Origin and scope of the right to deduct

1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

…'

4 Article 20 of the Sixth Directive reads as follows:

'Adjustments of deductions

1. The initial deduction shall be adjusted according to the procedures laid down by the Member States, in particular:

(a) where that deduction was higher or lower than that to which the taxable person was entitled;

(b) where after the return is made some change occurs in the factors used to determine the amount to be deducted, in particular where purchases are cancelled or price reductions are obtained; however, adjustment shall not be made in cases of transactions remaining totally or

partially unpaid and of destruction, loss or theft of property duly proved or confirmed, nor in the case of applications for the purpose of making gifts of small value and giving samples specified in Article 5(6). However, Member States may require adjustment in cases of transactions remaining totally or partially unpaid and of theft.

2. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment shall be made only in respect of one fifth of the tax imposed on the goods. The adjustment shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired or manufactured.

By way of derogation from the preceding subparagraph, Member States may base the adjustment on a period of five full years starting from the time at which the goods are first used.

In the case of immovable property acquired as capital goods the adjustment period may be extended up to 10 years.

4. For the purposes of applying the provisions of paragraphs 2 and 3, Member States may:

– define the concept of capital goods,

– indicate the amount of the tax which is to be taken into consideration for adjustment,

– adopt any suitable measures with a view to ensuring that adjustment does not involve any unjustified advantage,

– permit administrative simplifications.

…

6. Where the taxable person transfers from being taxed in the normal way to a special scheme or vice versa, Member States may take all necessary measures to ensure that the taxable person neither benefits nor is prejudiced unjustifiably.'

National provisions

5 In order to prevent contrived financial arrangements relating to immovable property, the Wet op de Omzetbelasting 1968 (Law of 1968 on Turnover Tax; 'Wet OB 1968') was amended by the Wet houdende wijziging van de Wet op de Omzetbelasting 1968, de Wet op belastingen van rechtsverkeer en enkele andere belastingwetten in verband met de bestrijding van constructies met betrekking tot onroerende zaken (Law amending the Law of 1968 on Turnover Tax, the Law on the taxation of legal transactions and a number of other tax laws in connection with the prevention of contrived arrangements relating to immovable property) of 18 December 1995 (Stbl. 1995, p. 659; 'the amending law').

6 As it is entitled to do under Article 5(3)(b) of the Sixth Directive, the Netherlands legislature adopted Article 3(2) of the Wet OB 1968, which provides that the grant of a right over immovable property is classed as a 'supply of goods'. However, the amending law introduced an exception to that classification and has the effect that the grant of a right of usufruct is regarded as a letting of immovable property when the consideration for that right, plus turnover tax, is less than the economic value of that right.

7 It also follows from the amendment of Article 11(1)(b), point 5, of the Wet OB 1968 that the letting of immovable property is generally exempt from VAT and that 'letting of immovable

property' also includes any other form of making immovable property available for use which does not constitute a supply of those goods.

8 The amending law came into force on 29 December 1995. It provided, however, that it was to take effect as from 18.00 hours on 31 March 1995, the date and time when the content of the future law was announced by means of a press release.

9 According to the details given by the national court, in press releases dated 31 March 1995 and 3 April 1995, the Staatssecretaris van Financiën announced the intention of the Council of Ministers to propose to the Netherlands Parliament an amendment to the Wet OB 1968, relating inter alia to Articles 3(2) and 11(1)(b), point 5. He also stated the intention of the Council of Ministers that, after the entry into force of the proposed amendment, the Wet OB 1968 should be interpreted, as from 18.00 hours on 31 March 1995, in accordance with the meaning given to it by the amending law.

The main proceedings and the question referred for a preliminary ruling

10 According to the order for reference, the Stichting 'Goed Wonen', claimant in the main proceedings, is the legal successor in title to the Woningbouwvereniging 'Goed Wonen' (the 'Goed Wonen' Housing Association; 'the GW Association').

11 By notarial act of 28 April 1995, the GW Association created the 'De Goede Woning' foundation ('the GW Foundation'). On the same day, it granted a right of usufruct to the foundation for a term of 10 years in respect of three housing complexes for consideration which was less than the cost price of that housing. Some of the housing was still under construction. Until that date, the claimant in the main proceedings had not deducted the tax it had been charged on account of the supply or construction of the housing.

12 In its tax return for the period from 1 April to 30 June 1995, the GW Association indicated, first, the VAT it had charged to the GW Foundation for the grant of the usufruct, that is, NLG 645 067, and, second, the amount of the VAT which it had been charged for the construction of the housing, that is, NLG 1 285 059, which was deducted as input tax. On the basis of that return, NLG 639 992 was refunded to the GW Association, by way of adjustment.

13 The Tax Inspector, taking into account the amending law, then issued an additional assessment in the amount of the sum deducted by the GW Association. That assessment was upheld by a decision of 12 December 1996 which was challenged by the GW Association before the Gerechtshof te Arnhem (Regional Court of Appeal, Arnhem). However, by decision of 14 February 1997, the Tax Inspector reduced the additional assessment, on his own initiative, to NLG 639 992, which was the amount the tax authorities had reimbursed to the GW Association on the basis of its tax return.

14 On 21 August 1997, the GW Association took the legal form of a foundation and became the Stichting 'Goed Wonen'.

15 By judgment of 20 May 1998, the Gerechtshof te Arnhem confirmed the additional assessment, as reduced in the meantime by the Tax Inspector. It is against that judgment that the Stichting 'Goed Wonen' brought an appeal on a point of law before the national court.

16 In the first case referred to the Court, the purpose of the questions raised relating to the interpretation of the Sixth Directive was to determine whether Articles 5(3)(b) and 13B(b) and 13C(a) precluded national legislation such as the amending law, which had the effect that the grant of a right of usufruct was regarded, in the circumstances laid down by that law, as a letting

exempt from VAT. In its *'Goed Wonen'* judgment, cited above, the Court held:

'1 On a proper construction of Article 5(3)(b) of [the Sixth Directive], it does not preclude adoption of a national provision, such as Article 3(2) of the [Wet OB 1968, as amended], whereby classification as a "supply of goods" of the grant, transfer, modification, waiver or termination of rights *in rem* in immovable property is made subject to the condition that the total consideration, plus turnover tax, must amount to at least the economic value of the immovable property to which those rights *in rem* relate.

2 On a proper construction of Article 13B(b) and C(a) of [the Sixth Directive], it does not preclude adoption of a national provision such as Article 11(1)(b), point 5, of [that law of 28 June 1968, as amended], which, for the purposes of the application of the exemption from value added tax, allows the grant, for an agreed period and for payment, of a right *in rem* entitling the holder to use immovable property, such as the usufructuary right in question in the present case, to be treated as the leasing or letting of immovable property.'

17 In its decision of 20 May 1998, the Gerechtshof had, inter alia, ruled that the retroactive effect of the amending law was not incompatible with any provision of the Sixth Directive. In that respect, the Stichting 'Goed Wonen' claimed in its appeal that the retroactive effect of that law from 31 March 1995, at 18.00 hours, was contrary to Community law. At the very least, that amending law could have retroactive effect only from the date of submission of the draft of that law to the Netherlands Parliament, that is, from 23 May 1995.

18 In its judgment of 24 August 1999, in which it raised the questions referred for a preliminary ruling in the first case, the Hoge Raad had taken the view that the Stichting 'Goed Wonen' had failed in its plea and that the assessment of the Gerechtshof was well founded.

19 In its order for reference in this case, the Hoge Raad explains that the view it had expressed in the earlier judgment has, however, become questionable since the judgment of the Court in Case C-396/98 *Schlossstraße* [2000] ECR I-4279, in which the Court held that 'Article 17 of [the Sixth Directive] must be interpreted as meaning that a taxable person's right to deduct VAT paid in respect of goods or services supplied to him with a view to his carrying out certain letting operations is retained where a legislative amendment post-dating the supply of those goods or services but pre-dating the commencement of such operations deprives the taxable person concerned of the right to waive exemption thereof …'.

20 The national court explains as follows why the Stichting 'Goed Wonen' did not deduct the VAT relating to the construction works before 28 April 1995:

'6.3.1. In the present case the appellant had housing complexes built prior to 28 April 1995. It initially intended to let the houses after they had been completed. Such letting is exempt – with no possibility of exclusion – under Article 11(1)(b) of the [Wet OB 1968] (Article 13B(b) of the Sixth Directive). During the construction period the appellant had the right, in principle, to deduct turnover tax charged to it in that respect. When the houses were subsequently let, a supply of goods took place, as referred to in Article 3(1)(h) of the Law (the Netherlands legislature availed itself of the possibility which Article 5(7)(a) of the Sixth Directive provides for regarding such a transaction as a supply of goods), in respect of which the appellant owed tax in relation to the taxable amount as referred to in Article 8(3) of the Law (Article 11A(1)(b) of the Sixth Directive).

6.3.2. However, under a ministerial decree, housing corporations such as the appellant need not apply Article 3(1)(h) of the Law. That subparagraph of the article – and Article 5(7)(a) of the Sixth Directive – does not apply to them if they express a wish to that effect, which they do, according to the abovementioned decree, by not deducting the tax charged during construction. Pursuant to

this rule, the appellant deducted no turnover tax during the construction of the houses.

6.3.3. On 28 April 1995 the appellant supplied the houses within the meaning of Article 3(2) of the Law (in the version then still in force), which is based on Article 5(3)(b) of the Sixth Directive. That supply was ... not exempt from turnover tax. This meant that, at that time, the appellant acquired, under Article 15(4) of the Law, which is based on Article 17 and Article 20(1)(a) of the Sixth Directive, a right to adjustment of the turnover tax which had not been deducted previously. It was deprived of that right by the [amending] law … to which retroactive effect was given, dating back to the period prior to the time at which the usufructuary right in question was granted.'

21 In paragraph 6.3.4 of the order for reference, the Hoge Raad stated what it is that distinguishes the case in the main proceedings from the circumstances considered in the *Schlossstraße* judgment as follows:

'Although it did not concern any entry into force with retroactive effect, *Schlossstraße* did relate to a legislative amendment which resulted in the withdrawal of an acquired right to deduct, since the transactions which determined whether or not the party concerned had a right to deduct were carried out after that legislative amendment had entered into force and were then, unlike previously, compulsorily exempt with no right no deduct.

The present case is different, in so far as both the creation of the right to deduct and the transaction which warranted that right (the appellant had previously had no such right) took place at the same time and the legislative amendment entered into force after that time. In that regard, it should be noted that the proposed legislative amendment was made known to the press prior to that time and notice was given, stating reasons which pointed in particular to the undesirable effects which would result from an announcement of an amendment without retroactive effect, that the amendment would, in so far as it is relevant here, take effect as from 18.00 hours on 31 March 1995.'

22 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Under circumstances such as those set out at paragraph 6.3.4 above, do Articles 17 and 20 of the Sixth Directive or the European law principles of the protection of legitimate expectations and of legal certainty preclude – in a case not involving fraud or abuse or any question of a change in planned use, as mentioned in paragraphs 50 and 51 of the judgment of the Court of Justice in *Schlossstraße* – the adjustment of VAT not deducted by a taxable person which he paid in respect of (immovable) property which is supplied to him and which he originally intended for letting (which is not subject to VAT), but subsequently used for a transaction subject to VAT (in the present case, the grant of a usufructuary right *in rem*), being revoked on the sole ground that, as a result of a legislative amendment which had not yet taken effect at the time at which the abovementioned transaction was carried out, that transaction is regarded with retroactive effect as an exempt transaction establishing no right to deduct?'

23 In its decision, the national court referred to Joined Cases C-487/01 *Gemeente Leusden* and C-7/02 *Holin Groep*, in which it had referred questions for a preliminary ruling on the same provisions. Since judgment was given in those cases on 29 April 2004 (Joined Cases C?487/01 and C-7/02 *Gemeente LeusdenandHolin Groep* [2004] ECR I?0000), that judgment was sent to the national court and it was asked whether an answer to the question referred was still necessary. By letter of 3 June 2004, the Hoge Raad informed the Court that it wished to maintain its reference.

Substance

24 By its question, the national court asks, essentially, whether Articles 17 and 20 of the Sixth Directive or the European law principles of the protection of legitimate expectations and legal certainty preclude revocation of an adjustment of VAT made on account of the exercise, when immovable property is used for a taxable transaction, of a right to deduct VAT paid in respect of the supply of that immovable property, as a result of the adoption, after that adjustment, of a law abolishing the taxable nature of the transaction and which, in accordance with the decision of the national legislature, comes into effect prior to the use of the immovable property for the taxable transaction and the coming into existence of the right to deduct arises.

25 As is clear from the order for reference, that question was raised in order to determine whether the solution identified by the Court in the *Schlossstraße* judgment, cited above, applies to the facts of the present case in the main proceedings.

26 First of all, it should be noted that the deduction system is meant to relieve the trader entirely of the burden of VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures that all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT, are taxed in a wholly neutral way (Case 50/87 *Commission* v *France* [1988] ECR 4797, paragraph 15).

27 In paragraph 53 of the judgment in *Schlossstraße*, cited above, the Court held that Article 17 of the Sixth Directive must be interpreted as meaning that a taxable person's right to deduct VAT paid in respect of goods or services supplied to him with a view to his carrying out certain letting operations is retained where a legislative amendment post-dating the supply of those goods or services but pre-dating the commencement of such operations deprives the taxable person concerned of the right to waive exemption thereof.

28 However, the situation of the claimant in the main proceedings here can be distinguished from the situation described in *Schlossstraße*, cited above, in which the taxable person had deducted the VAT paid before the legislative amendment took effect. The claimant in the main proceedings did not deduct the VAT paid in respect of the supply of the goods until 28 April 1995, that is, before the adoption of the amending law on 18 December 1995 but after that law went into effect, on 31 March 1995, in accordance with the express decision of the national legislature to give it retroactive effect.

29 Since the amending law, by reason of its retroactive effect, thus took effect before the taxable person made the deduction, it is not necessary, in order to answer the question raised by the national court, to refer to Article 17 of the Sixth Directive.

30 In respect of Article 20 of the Sixth Directive, it would appear that the question referred for a preliminary ruling by the national court cites that article in conjunction with Article 17 of the same directive in order to ascertain whether it must be interpreted as precluding, in the facts of the main proceedings, the revocation of the adjustment resulting from the deduction which was made. For the reason set out in the preceding paragraph, the question whether Community law precludes the retroactive effect of the amending law does not fall to be assessed in the light of Article 20.

31 On the other hand, the general principles of Community law and, in particular, the principles of the protection of legitimate expectations and legal certainty must be examined in order to determine whether they preclude the adjustment resulting from the deduction which was made being revoked by the retroactive effect of a law.

32 The principles of the protection of legitimate expectations and legal certainty form part of the Community legal order. They must accordingly be observed by the Community institutions (Case 74/74 *CNTA* v *Commission* [1975] ECR 533), but also by the Member States when they exercise the powers conferred on them by Community directives (*Gemeente LeusdenandHolin Groep*, cited above, paragraph 57).

33 Although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected (see, to that effect, Case C-368/89 *Crispoltoni* [1991] ECR I-3695, paragraph 17; *Gemeente Leusden and Holin Groep*, cited above, paragraph 59; see also the judgment of the European Court of Human Rights in *National & Provincial Building Societyv.United Kingdom* of 23 October 1997, *Reports of Judgments and Decisions* 1997-VII, § 80).

34 The same principle must be observed by the national legislature when it adopts legislation within the sphere of Community law.

35 The Stichting ‘Goed Wonen’ claims that the retroactive effect of the amending law was not necessary, since the Netherlands Government had known for years about contrived arrangements such as its own. Furthermore, there was no fraud or tax evasion as the law had been observed.

36 On the other hand, the Netherlands Government contends, as was stated in the press release of the Staatssecretaris van Financiën, that the reason for the retroactive effect was fear that contrived arrangements would be put into operation on a large scale between the time at which it was decided to amend the law and the time at which that amendment came into force. In its opinion on the draft law, the Raad van State (Council of State) took the view that retroactivity was justified. It was also approved by the two chambers of the Netherlands Parliament, even though in the Netherlands the retroactive application of legislative amendments is generally not regarded favourably.

37 The Netherlands Government is supported on that point by the Swedish Government, which states that, despite the great care taken in Sweden to observe the principles of the protection of legitimate expectations and legal certainty, the Swedish Constitution provides that, in order to avoid an increase in tax avoidance before a law intended to curb it has entered into force, the Swedish Parliament may decide that a new tax law is to apply from the day on which the government of that State sends it a letter making known its intention to amend the law.

38 A reading of the press release of 31 March 1995 shows that the reason for the retroactive effect of the amending law was not concern to put an end to contrived financial arrangements used for many years, but rather fear that such arrangements would be put into operation on a large scale between the time at which it was decided to amend the law and the time at which that amendment came into force.

39 Such a fear is not unfounded, and prevention of such arrangements may be in the general interest and, on an exceptional basis, justify a Member State’s using the mechanism of retroactive legal effect, provided that the legitimate expectations of taxable persons are duly respected. It is however for the national court, which best knows the circumstances of the case, to assess whether the risk of contrived financial arrangements being created in that period of time was significant enough to justify the retroactive effect of the law.

40 In respect of the legitimate expectations of economic operators, the Stichting ‘Goed Wonen’ claims that they cannot be expected to have knowledge of all press releases issued by the

authorities or to believe that all proposals announced will actually be implemented. In addition, the press release was too brief and too vague. The full text of the amendments envisaged was not known until the draft law was submitted to the Netherlands Parliament on 23 May 1995.

41 The Netherlands Government points out that the press release was preceded by several speeches of the Staatssecretaris van Financiën before the Netherlands Parliament announced the measures in question. Moreover, that press release was clear and specifically referred to contrived financial arrangements such as those used by the claimant in the main proceedings. Amendments were made to the draft during the passage of the legislation, but they were intended only to specify certain exceptions to the application of the principles of the draft law, so that those amendments were not relevant to the situation of the claimant in the main proceedings.

42 The Swedish Government takes the view that the question whether legitimate expectations have been respected must be assessed in the light of law-making tradition in each Member State. In Sweden, the tradition to which expression is given in the Constitution requires retroactive effect to date back to the day on which a letter is sent by the Swedish Government to the Swedish Parliament announcing the submission of the draft law. In the case in the main proceedings, it is in the light of law-making tradition in the Netherlands that it must be assessed whether the legitimate expectations of economic operators have been respected.

43 As the case in the main proceedings concerns national legislation, the procedures for dissemination of information normally used by the Member State which adopted it and the circumstances of the case must be taken into account when the question whether the legitimate expectations of the economic operators covered by that legislation were duly respected in the specific case is assessed.

44 According to the order for reference, the Staatssecretaris van Financiën officially announced, by press releases of 31 March and 3 April 1995, that the Council of Ministers intended to submit to the Netherlands Parliament a draft amendment to the Wet OB 1968, relating inter alia to Articles 3(2) and 11(1)(b), point 5, thereof, and to give effect to the amending law as from 31 March 1995 at 18.00 hours. It is however for the national court to determine whether those documents were sufficiently clear to enable an economic operator carrying out economic transactions such as those referred to by the law to understand the consequences of the legislative amendment proposed for the transactions it carries out.

45 In the light of all of the foregoing considerations, the answer to the question referred must be as follows:

The principles of the protection of legitimate expectations and legal certainty do not preclude a Member State, on an exceptional basis and in order to avoid the large-scale use, during the legislative process, of contrived financial arrangements intended to minimise the burden of VAT that an amending law is specifically designed to combat, from giving that law retroactive effect when, in circumstances such as those in the main proceedings, economic operators carrying out economic transactions such as those referred to by the law were warned of the impending adoption of that law and of the retroactive effect envisaged in a way that enabled them to understand the consequences of the legislative amendment planned for the transactions they carry out.

When that law exempts an economic transaction in respect of immovable property previously subject to VAT, it may have the effect of revoking a VAT adjustment made on account of the exercise, when immovable property was used for a transaction regarded at that time as taxable, of a right to deduct VAT paid in respect of the supply of that immovable property.

Costs

46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) rules as follows:

The principles of the protection of legitimate expectations and legal certainty do not preclude a Member State, on an exceptional basis and in order to avoid the large-scale use, during the legislative process, of contrived financial arrangements intended to minimise the burden of value added tax that an amending law is specifically designed to combat, from giving that law retroactive effect when, in circumstances such as those in the main proceedings, economic operators carrying out economic transactions such as those referred to by the law were warned of the impending adoption of that law and of the retroactive effect envisaged in a way that enabled them to understand the consequences of the legislative amendment planned for the transactions they carry out.

When that law exempts an economic transaction in respect of immovable property previously subject to value added tax, it may have the effect of revoking a value added tax adjustment made on account of the exercise, when immovable property was used for a transaction regarded at that time as taxable, of a right to deduct value added tax paid in respect of the supply of that immovable property.

[Signatures]

* Language of the case: Dutch.