Case C-86/09

Future Health Technologies Limited

v

The Commissioners for Her Majesty's Revenue and Customs

(Reference for a preliminary ruling from the VAT and Duties Tribunal, Manchester)

(Value added tax – Directive 2006/112/EC – Exemptions – Article 132(1)(b) and (c) – Hospital and medical care and closely related activities – Provision of medical care in the exercise of the medical and paramedical professions – Collection, testing and processing of umbilical cord blood – Storage of stem cells – Possible future therapeutic use – Transactions comprising a bundle of features and acts)

Summary of the Judgment

1. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Exemptions provided for in the Sixth Directive – Exemption for hospital and medical care and closely related activities – Exemption in respect of the provision of medical care in the exercise of the medical and paramedical professions*

(Council Directive 2006/112, Art. 132(1)(b) and (c))

2. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Exemptions provided for in the Sixth Directive – Exemption for hospital and medical care and closely related activities*

(Council Directive 2006/112, Art. 132(1)(b))

1. When activities consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use, are intended only to ensure that a particular resource will be available for medical treatment in the uncertain event that treatment becomes necessary but not, in themselves, to diagnose, treat or cure diseases or health disorders, such activities, whether taken together or separately, do not come within the concept of 'hospital and medical care' in Article 132(1)(b) of Directive 2006/112 on the common system of value added tax, or within that of 'the provision of medical care' in Article 132(1)(c) of that directive. It would be otherwise, as regards the analysis of umbilical cord blood, only if such analysis were actually intended to enable a medical diagnosis to be made, which it is for the referring court to determine.

(see para. 47, operative part 1)

2. Activities ‘closely related’ to ‘hospital and medical care’, within the meaning of Article 132(1)(b) of Directive 2006/112 on the common system of value added tax, are to be interpreted as not covering activities consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use to which those activities are merely potentially related and which has not been performed, commenced or yet envisaged.

(see para. 52, operative part 2)

JUDGMENT OF THE COURT (Second Chamber)

10 June 2010 (*)

(Value added tax – Directive 2006/112/EC – Exemptions – Article 132(1)(b) and (c) – Hospital and medical care and closely related activities – Provision of medical care in the exercise of the medical and paramedical professions – Collection, testing and processing of umbilical cord blood – Storage of stem cells – Possible future therapeutic use – Transactions comprising a bundle of features and acts)

In Case C?86/09,

REFERENCE for a preliminary ruling under Article 234 EC from the VAT and Duties Tribunal, Manchester (United Kingdom), made by decision of 23 February 2009, received at the Court on 27 February 2009, in the proceedings

Future Health Technologies Limited

v

The Commissioners for Her Majesty’s Revenue and Customs,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, P. Lindh, A. Rosas, A. Ó Caoimh (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: E. Sharpston,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 18 March 2010,

after considering the observations submitted on behalf of:

– Future Health Technologies Limited, by R. Thomas, Barrister,

– the United Kingdom Government, by L. Seeboruth and H. Walker, acting as Agents, and I.

Hutton, Barrister,

– the Greek Government, by O. Patsopoulou, Z. Chatzipavlou, M. Tassopoulou and M. Apessos, acting as Agents,

– the European Commission, by R. Lyal and M. Afonso, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 132(1)(b) and (c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The reference was made in the course of proceedings between Future Health Technologies Limited ('FHT') and the Commissioners for Her Majesty's Revenue and Customs ('HMRC'), who are responsible for the collection of value added tax ('VAT') in the United Kingdom, concerning their refusal to exempt from VAT paid activities consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use.

Legal context

European Union legislation

3 Directive 2006/112 repealed and replaced, with effect from 1 January 2007, the existing Community VAT legislation, particularly 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').

4 According to the first and third recitals in the preamble to Directive 2006/112, the recasting of the Sixth Directive was necessary in order to present all the applicable provisions in a clear and rational manner and in an improved structure and drafting which would not, in principle, bring about material change.

5 Article 2 of Directive 2006/112 reads as follows:

'1. The following transactions shall be subject to VAT:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

…

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

(d) the importation of goods.

…'

6 Article 131 of Directive 2006/112 is the sole article in that directive's Chapter 1 ('General provisions') of Title IX ('Exemptions'). That article reads as follows:

'The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.'

7 Article 132(1)(b) and (c) in Chapter 2 of Title IX of Directive 2006/112 provide:

'1. Member States shall exempt the following transactions:

...

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with 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;

...'

8 Apart from their introductory passage, the exemptions in Article 132(1)(b) and (c) of Directive 2006/112 are in identical terms to those in Article 13A(1)(b) and (c) of the Sixth Directive. The introductory passage of the latter provisions reads as follows:

'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.'

9 Article 133 of Directive 2006/112 provides that Member States may make the granting of the exemption provided for in, among others, Article 132(1)(b) thereof to bodies other than those governed by public law subject, in each individual case, to one or more of the conditions which it lays down.

10 Article 134 of Directive 2006/112 is in the following terms:

'The supply of goods or services shall not be granted exemption, as provided for in [point] (b) … of Article 132(1), in the following cases:

(a) where the supply is not essential to the transactions exempted;

(b) where the basic purpose of the supply is to obtain additional income for the body in question through transactions which are in direct competition with those of commercial enterprises subject to VAT.'

National legislation

11 Section 31 of the Value Added Tax Act 1994 provides that a supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9 to that Act.

12 Group 7 in Schedule 9 to that Act describes the following supplies, among others, as

exempt:

– the supply of services by a person registered in, among other places, the register kept under the Health Professions Order 2001 (Statutory Instrument 2002 No 254);

– the provision of care or medical or surgical treatment and, in connection with it, the supply of any goods, in any hospital or state regulated institution;

– products for therapeutic purposes, derived from human blood; and

– human (including foetal) organs or tissue for diagnostic or therapeutic purposes or medical research.

13 HMRC guidance states that, in general, services provided by health professionals registered under the Health Professions Order 2001 are considered to be principally for the purpose of protecting, maintaining or restoring the health of the individual concerned and are therefore exempt from VAT.

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 FHT is accredited and licensed by the relevant British authorities as a private stem cell bank. In connection with the services it supplies to parents of newborn children, it carries out activities consisting in the dispatch of a kit for collecting blood from the umbilical cord and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it.

15 Those activities are directly supervised by a clinical scientist registered as a health professional in the register kept under the Health Professions Order 2001. The stem cells are collected at birth with a view to their possible future use for medical treatment of the child itself (‘autologous’ use) or of other persons (‘allogeneic’ or ‘heterologous’ use). By virtue, in particular, of the contract between FHT and the child’s parent or parents (‘the Contract’), the cells processed and stored by FHT are for medical use only. They are not available for research or experimentation.

16 In each case the events which will or may occur in consequence of FHT agreeing to provide its services under the Contract are as follows:

(a) a kit for collecting umbilical cord blood is sent to the parents of the unborn child;

(b) the parents arrange (at their own expense) for a medical professional attending the birth to collect blood from the umbilical cord shortly after birth;

(c) the blood is transported by medical courier to FHT’s laboratory. This is a purpose-built facility for the analysis and extraction of stem cells from umbilical cord blood;

(d) employees of FHT test the blood to ensure that it is not contaminated with any medical condition that could be transmitted via the blood. This testing occurs soon after birth and again after 6 months;

(e) the blood is then processed to extract a sample of stem cells suitable for medical application;

(f) the stem cell sample is cryopreserved and stored ready for use;

(g) the sample is stored pending use in medical treatments; and

(h) the stem cell sample is released on request of the parents (until the child is 18 years old) for use in medical treatment.

17 There are two options for payment under the Contract. The first option requires the client to pay two fixed sums for all the activities in question in the main proceedings, including six months' storage, together with a further annual sum for continuing storage of the stem cells. The second option enables the client to pre-pay three fixed sums for all those activities and for 20 years' storage in advance. The total price under the first option is GBP 995 plus a further annual sum of GBP 30. If the second option is chosen the total price will be GBP 1 295.

18 According to the decision making the reference, the cost to customers taking the 20 year storage package is apportioned as follows:

– Item (a) in paragraph 16 above constitutes 15% of the total cost to the customer (requiring the payment of a fee of GBP 200);

– Any costs associated with Item (b) are for the customer to arrange independently;

– Items (c) to (e) in paragraph 16 above, namely transport to FHT's laboratory, processing, analysis and testing, constitute 62% of the total cost to the customer (requiring the payment of a fee of GBP 795);

– Item (g), that is to say the storage, constitutes 23% of the total cost (requiring the payment of a fee of GBP 300).

19 The costs incurred by FHT in providing the activities in question in the main proceedings can be broken down as follows:

– Supply of cord blood collection kit and administration: 7%;

– Processing, analysis, testing and cryopreservation of a sample: 91%;

– Storage of the prepared sample: 2%.

20 The vast majority of the staff time relating to the delivery of the supplies under the Contract is associated with the analysis, testing and subsequent processing of the blood. The staff time associated with storage, once the samples are cryopreserved, is minimal.

21 The decision making the reference states that, initially, HMRC took the view that the collection and testing of stem cells – but not their storage – were exempt under Item 8 in Group 7 of Schedule 9 to the Value Added Tax Act 1994 (supply of human (including foetal) organs or tissue, etc.). FHT was thus treated as effecting both exempt and taxable transactions.

22 HMRC subsequently took the view that the principal supply was storage of the stem cells, an activity which did not constitute medical treatment, and that the analysis and processing of the cells was ancillary to that activity. Moreover, even if the activities were to be examined separately, testing and processing of stem cells was not, in their view, to be regarded as medical care.

23 FHT appealed to the VAT and Duties Tribunal, Manchester, claiming that:

– the supplies it made constitute a single composite supply of prophylactic medical care covered by the exemption under Article 132(1)(c) of Directive 2006/112; or

– they constitute a single composite supply of hospital or medical care or activities closely related thereto covered by the exemption under Article 132(1)(b) of that directive, or

– alternatively, if the supplies made by FHT do not constitute a single composite transaction, the supplies of collection, testing, analysing, processing and cryopreserving, as well as that of making the stem cells available in due course for therapeutic purposes, are each an exempt transaction within Article 132(1)(b) and (c) of that directive.

24 In those circumstances the VAT and Duties Tribunal, Manchester, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. In circumstances where a Member State accepts that services are carried out by an establishment falling to be treated as a duly recognised establishment of a similar nature to a hospital or a centre for medical treatment or diagnosis within Article 132(1)(b) of … Directive [2006/112], is the expression “hospital and medical care” in Article 132(1)(b) to be interpreted as including the aggregate of or, alternatively, one or more of (and if so which) services of the following descriptions (as more fully described in the Agreed Statement of Facts):

(a) The provision to the parents of an unborn child of a kit of the necessary medical equipment to enable an independent medical professional attending the birth to collect blood from the umbilical cord of the child shortly after birth;

(b) The testing of the blood thereby collected at a purpose-built facility for the purpose of ensuring that it is not contaminated with any medical condition that could be transmitted via the blood or via an extract of stem cells from the blood in the event of the therapeutic use of the stem cells (with similar testing occurring again after 6 months);

(c) The processing of the said blood by and under the supervision of suitably qualified medical professionals to extract a sample of stem cells suitable for therapeutic medical use;

(d) The storing of the blood and stem cells in scientifically controlled conditions designed to maintain and preserve the blood and stem cells in perfect condition; and/or

(e) The releasing of the blood on request of the parents (until the child is 18 years old) for use in medical treatment?

2. Alternatively, should the concept of activities that are “closely related” to hospital and medical care in Article 132(1)(b) of … Directive [2006/112] be interpreted so as to include all or any (and if so which) of the above services?

3. In circumstances where a Member State accepts that the said services are carried out by or under the supervision of one or more suitably-qualified medical professionals, is the expression “the provision of medical care” in Article 132(1)(c) of … Directive [2006/112] to be interpreted as including the aggregate of or, alternatively, one or more of (and if so which) services of the following descriptions (as more fully described in the Agreed Statement of Facts):

(f) The provision to the parents of an unborn child of a kit of the necessary medical equipment to enable an independent medical professional attending the birth to collect blood from the umbilical cord of the child shortly after birth;

(g) The testing of the blood thereby collected at a purpose-built facility for the purpose of ensuring that it is not contaminated with any medical condition that could be transmitted via the blood or via an extract of stem cells from the blood in the event of the therapeutic use of the stem cells (with similar testing occurring again after 6 months);

(h) The processing of the said blood by and under the supervision of suitably qualified medical professionals to extract a sample of stem cells suitable for therapeutic medical use;

(i) The storing of the blood and stem cells in scientifically controlled conditions designed to maintain and preserve the blood and stem cells in perfect condition; and/or

(j) The releasing of the blood on request of the parents (until the child is 18 years old) for use in medical treatment?'

The questions referred

Preliminary observations

25 It should be noted at the outset that under Directive 2006/112, as under the Sixth Directive, the scope of VAT is very wide in that Article 2 of the former, which concerns taxable transactions, refers not only to the importation of goods but also to the supply of goods or services for consideration within the territory of the country by a taxable person acting as such (see by analogy, among others, Case C?255/02 *Halifax and Others* [2006] ECR I?1609, paragraph 49; Case C?401/05 *VDP Dental Laboratory* [2006] ECR I?12121, paragraph 22; and Case C?88/09 *Graphic Procédé* [2010] ECR I?0000, paragraph 15). Article 132 of Directive 2006/112 nevertheless exempts, in the same way as Article 13 of the Sixth Directive, certain activities from VAT.

26 As stated in paragraphs 4, 6 and 8 of the present judgment, the wording of Article 13A(1)(b) and (c) of the Sixth Directive is, essentially, identical to that of Article 132(1)(b) and (c) of Directive 2006/112, read in conjunction with Article 131 thereof. In addition, it appears from recitals 1 and 3 in its preamble that Directive 2006/112 is not, in principle, intended to bring about material change as against the provisions of the Sixth Directive.

27 It follows that Article 13A(1)(b) and (c) of the Sixth Directive and Article 132(1)(b) and (c) of Directive 2006/112 must be interpreted in the same way (see also, by analogy, Case C?291/07 *Kollektivavtalsstiftelsen TRR Trygghetsrådet* [2008] ECR I?8255, paragraph 23). Thus, the case-law developed in relation to the exemptions provided for by Article 13A(1)(b) and (c) of the Sixth Directive lends itself, in the present case, to serving as a basis for the replies sought by the request for a preliminary ruling.

28 In that regard, it is settled case-law that the exemptions referred to in Article 13 of the Sixth Directive constitute independent concepts of European Union law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another (see by analogy, in particular, Case C?349/96 *CPP* [1999] ECR I?973, paragraph 15, and Case C?473/08 *Eulitz* [2010] ECR I?0000, paragraph 25). The same applies as regards the exemptions under Article 132 of Directive 2006/112.

29 It is, moreover, apparent from the case-law relating to Article 13A of the Sixth Directive that the exemptions under Article 132 of Directive 2006/112 are not aimed at exempting from VAT every activity performed in the public interest, but only those which are listed and described in great detail in it (see by analogy, in particular, Case 107/84 *Commission* v *Germany* [1985] ECR

2655, paragraph 17; Case C?307/01 *D'Ambrumenil and Dispute Resolution Services* [2003] ECR I?13989, paragraph 54; and *Eulitz*, paragraph 26 and the case-law cited).

30 It also follows from the case-law relating to the Sixth Directive that the terms used to specify the exemptions in Article 132 of Directive 2006/112 are to be interpreted strictly, since they constitute exceptions to the general principle, arising from Article 2(1)(a) and (c) of Directive 2006/112, that VAT is to be levied on all goods and services supplied for consideration by a taxable person. Nevertheless, the interpretation of those terms must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Thus, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 132 should be construed in such a way as to deprive the exemptions of their intended effect (see by analogy, in particular, Case C?445/05 *Haderer* [2007] ECR I?4841, paragraph 18 and the case-law cited; Case C?461/08 *Don Bosco Onroerend Goed* [2009] ECR I?0000, paragraph 25 and the case-law cited; as well as *Eulitz*, paragraph 27 and the case-law cited).

31 It is in the light of those considerations that the questions referred must be answered.

The first and third questions

32 By its first question, the referring court is asking whether, in circumstances where a Member State accepts that services are carried out by an establishment falling to be treated as a duly recognised establishment of a similar nature to a hospital or centre for medical treatment or diagnosis, as referred to in Article 132(1)(b) of Directive 2006/112, the expression 'hospital and medical care' in that provision is to be interpreted as including the aggregate of the activities in question in the main proceedings, namely the dispatch of a kit for collecting blood from the umbilical cord of newborn children and the testing and processing of that blood and, where appropriate, the storage of stem cells contained in it for possible future therapeutic use, or, alternatively, one or more of them and, if so, which.

33 By its third question, that court seeks to ascertain whether, in circumstances where a Member State accepts that those activities are carried out by or under the supervision of one or more suitably-qualified medical professionals, the expression 'the provision of medical care' in Article 132(1)(c) of Directive 2006/112 is to be interpreted as including the aggregate of the activities set out in the preceding paragraph of this judgment, or, alternatively, one or more of them and, if so, which.

34 However, as is apparent from, in particular, the wording of the first and third questions, it is common ground in the main proceedings that, first, for the purposes of Article 132(1)(b) of Directive 2006/112, FHT is to be treated as a duly recognised establishment of a similar nature to a hospital or centre for medical treatment and, second, for the purposes of Article 132(1)(c), FHT's activities are carried out in the exercise of the medical and paramedical professions as defined by the Member State concerned.

35 Therefore, essentially, the first and third questions relate respectively to the interpretation of the expressions 'hospital and medical care' in Article 132(1)(b) of Directive 2006/112 and 'the provision of medical care' in Article 132(1)(c) of that directive.

36 As regards medical services, it is apparent from the case-law that Article 13A(1)(b) of the Sixth Directive covered all services supplied in a hospital environment while Article 13A(1)(c) thereof covered medical services provided outside such a framework, both at the private address of the person providing the care and at the patient's home or at any other place (see, to that effect, Case C?141/00 *Kügler* [2002] ECR I?6833, paragraph 36). It follows that Article 13A(1)(b) and (c)

of the Sixth Directive, which had separate fields of application, were intended to regulate all exemptions of medical services in the strict sense (see *Kügler*, paragraph 36, and Case C?106/05 *L.u.P.* [2006] ECR I?5123, paragraph 26).

37 Accordingly, as the Court has previously ruled, the concept of ‘medical care’ in Article 13A(1)(b) of the Sixth Directive and that of ‘the provision of medical care’ in Article 13A(1)(c) were both intended to cover services which had as their purpose the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders (see Case C?45/01 *Dornier* [2003] ECR I?12911, paragraph 48 and the case-law cited, and *L.u.P.*, paragraph 27).

38 As is clear from paragraph 27 of the present judgment, the same now applies as regards the identical expressions in Article 132(1)(b) and (c) respectively of Directive 2006/112.

39 In those circumstances, it is appropriate to examine the first and third questions together, understanding each as seeking to ascertain, in essence, whether, in circumstances such as those of the main proceedings, all or part of the activities consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use have as their purpose the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders.

40 In that regard, it should be borne in mind that, whilst ‘medical care’ and ‘the provision of medical care’ must have a therapeutic aim, it does not necessarily follow that the therapeutic purpose of a service must be confined within a particularly narrow compass (see Case C?76/99 *Commission* v *France* [2001] ECR I?249, paragraph 23; Case C?212/01 *Unterpertinger* [2003] ECR I?13859, paragraph 40; and *L.u.P.*, paragraph 29).

41 Accordingly, medical services effected for the purpose of protecting, including maintaining or restoring, human health could benefit from the exemption under Article 13A(1)(b) and (c) of the Sixth Directive (see, to that effect, *Unterpertinger*, paragraphs 40 and 41; *D’Ambrumenil and Dispute Resolution Services*, paragraphs 58 and 59; and *L.u.P*., paragraph 29).

42 As follows from paragraph 27 of the present judgment, the same now applies as regards Article 132(1)(b) and (c) of Directive 2006/112.

43 However, the activities in question in the main proceedings, as carried out by FHT, namely the dispatch of a kit for collecting umbilical cord blood and the testing and processing of that blood and, where appropriate, the storage of stem cells contained in it, whether taken together or separately, do not appear to have as their direct purpose any actual diagnosis, treatment or cure of diseases or health disorders, or any actual protection, maintenance or restoration of health.

44 In that regard, while the detection of illness may admittedly be one of the possible purposes of collecting stem cells from umbilical cord blood, it seems to be clear from the documents in the court file, and particularly from the Contract, that the services provided by FHT are intended only to ensure that a particular resource will be available for medical treatment in the uncertain event that treatment becomes necessary but not, as such, to avert, avoid or prevent the occurrence of a health disorder, or to detect such a disorder in a latent or incipient state. If that were the case, which it is for the referring court to determine in the light of all the relevant facts in the proceedings before it, activities such as those in question in the main proceedings could not, by themselves, be regarded as being covered by the expressions ‘hospital and medical care’ in Article 132(1)(b) of Directive 2006/112, on the one hand, or ‘medical care’ in Article 132(1)(c) of Directive 2006/112, on the other.

45 However, if the referring court concluded that the analysis of umbilical cord blood is actually intended to enable a medical diagnosis to be made and does not merely form part of the testing of the stem cells for viability, it would be appropriate to conclude that there was a supply of diagnostic care capable of coming within the exemptions set out in Article 132(1)(b) or (c) of Directive 2006/112, subject to compliance with the other requirements of those subparagraphs and that directive.

46 Moreover, contrary to the FHT's argument at the hearing, the cryopreservation of living parts of a human body, albeit separately from that body, cannot, as such, constitute preventive medical care.

47 In view of the foregoing, the reply to the first and third questions, read together, is that where activities consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use, are intended only to ensure that a particular resource will be available for medical treatment in the uncertain event that treatment becomes necessary but not, as such, to diagnose, treat or cure diseases or health disorders, such activities, whether taken together or separately, do not come within the concept of 'hospital and medical care' in Article 132(1)(b) of Directive 2006/112, or within that of 'the provision of medical care' in Article 132(1)(c) of that directive. It would be otherwise, as regards the analysis of umbilical cord blood, only if such analysis were actually intended to enable a medical diagnosis to be made, which it is for the referring court, if need be, to determine.

The second question

48 By its second question, the referring court is asking, in essence, whether the concept of activities that are 'closely related' to 'hospital and medical care' within the meaning of Article 132(1)(b) of Directive 2006/112 is to be interpreted as including all or some of the activities, such as those in question in the main proceedings, consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use.

49 As regards Article 13A(1)(b) of the Sixth Directive, it is clear from paragraphs 45 to 50 of the judgment in Case C?262/08 *CopyGene* [2010] ECR I?0000, that the concept of activities 'closely related' to 'hospital and medical care' within the meaning of Article 13A(1)(b) of the Sixth Directive is to be interpreted as not covering activities such as the collection, transport and analysis of cord blood of newborn children and the storage of stem cells contained in that blood, where the medical care provided in a hospital environment to which those activities are merely potentially related has not been performed, commenced or yet envisaged.

50 The same must apply as regards Article 132(1)(b) of Directive 2006/112.

51 Therefore, since the activities in question in the main proceedings are, in essence, similar to services such as those that gave rise to the judgment in *CopyGene*, they cannot, taken together or separately, come within the concept of activities 'closely related' to 'hospital and medical care', within the meaning of Article 132(1)(b) of Directive 2006/112. Indeed, those activities are merely liable, if certain eventualities come to pass, to be closely related to medical care provided in a hospital environment which has not been performed, commenced or yet envisaged.

52 In the light of the foregoing, the reply to the second question must be that the concept of activities 'closely related' to 'hospital and medical care', within the meaning of Article 132(1)(b) of Directive 2006/112, is to be interpreted as not covering activities, such as those in question in the

main proceedings, consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use to which those activities are merely potentially related and which has not been performed, commenced or yet envisaged.

Costs

53 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 (Second Chamber) hereby rules:

1. **Where activities consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use, are intended only to ensure that a particular resource will be available for medical treatment in the uncertain event that treatment becomes necessary but not, as such, to diagnose, treat or cure diseases or health disorders, such activities, whether taken together or separately, do not come within the concept of 'hospital and medical care' in Article 132(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, or within that of 'the provision of medical care' in Article 132(1)(c) of that directive. It would be otherwise, as regards the analysis of umbilical cord blood, only if such analysis were actually intended to enable a medical diagnosis to be made, which it is for the referring court, if need be, to determine.**

2. **The concept of activities 'closely related' to 'hospital and medical care', within the meaning of Article 132(1)(b) of Directive 2006/112, is to be interpreted as not covering activities, such as those in question in the main proceedings, consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use to which those activities are merely potentially related and which has not been performed, commenced or yet envisaged.**

[Signatures]

* Language of the case: English.