

JUDGMENT OF THE COURT (First Chamber)

13 June 2013 (*)

(Common system of value added tax – Directive 2006/112/EC – Article 9(1) – Concept of ‘taxable person’ – Natural person – Taxable supply of a service – Occasional supply – Unconnected with a registered professional activity subject to VAT – Self-employed bailiff)

In Case C-62/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad – Varna (Bulgaria), made by decision of 1 February 2012, received at the Court on 7 February 2012, in the proceedings

Galin Kostov

v

Direktor na Direktsia ‘Obzhalvane i upravlienie na izpalnenieto’ – Varna pri Tsentralno upravlienie na Natsionalnata agentsia za prihodite,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Berger, A. Borg Barthet (Rapporteur), E. Levits and J.-J. Kasel, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

- Direktor na Direktsia ‘Obzhalvane i upravlienie na izpalnenieto’ – Varna pri Tsentralno upravlienie na Natsionalnata agentsia za prihodite, by S. Zlateva,
- the Bulgarian Government, by E. Petranova and T. Ivanov, acting as Agents,
- the Romanian Government, by R.-H. Radu, acting as Agent, and R.-I. Munteanu and I. Bara, legal advisers,
- the European Commission, by L. Lozano Palacios and V. Savov, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 February 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the concept of a taxable person for the purposes of valued added tax ('VAT') under the system laid down by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive').

2 The request has been made in proceedings between Mr Kostov and the Direktor na Direktsia 'Obzhalvane i upravljenje na izpalnenieto' – Varna pri Tsentralno upravljenje na Natsionalnata agentsia za prihodite (Director of the 'Appeals and Enforcement Management' Directorate, Varna, at the Central Administration of the National Revenue Agency; 'the Direktor') concerning a notice of assessment regarding transactions connected with a contract of agency.

Legal context

European Union law

3 Article 2 of the VAT Directive states:

'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;

...'

4 Article 9 of the VAT Directive provides as follows:

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

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

2. In addition to the persons referred to in paragraph 1, any person who, on an occasional basis, supplies a new means of transport, which is dispatched or transported to the customer by the vendor or the customer, or on behalf of the vendor or the customer, to a destination outside the territory of a Member State but within the territory of the Community, shall be regarded as a taxable person.'

5 Article 12(1) of the VAT Directive states:

'Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in the second subparagraph of Article 9(1) and in particular one of the following transactions:

(a) the supply, before first occupation, of a building or parts of a building and of the land on which the building stands;

(b) the supply of building land.’

6 Article 14 of the VAT Directive provides:

‘1. “Supply of goods” shall mean the transfer of the right to dispose of tangible property as owner.

2. In addition to the transaction referred to in paragraph 1, each of the following shall be regarded as a supply of goods:

...

(c) the transfer of goods pursuant to a contract under which commission is payable on purchase or sale.

...’

Bulgarian law

7 The Administrativen sad – Varna (Administrative Court, Varna, Bulgaria) takes into account the following provisions of the Law on value added tax (Zakon za danak varhu dobavenata stoynost; ‘the ZDDS’).

8 Article 2 of the ZDDS states:

‘The following shall be subject to [VAT]:

1. any taxable supply of goods or services for consideration;

...’

9 As set out in Article 3 of the ZDDS:

‘(1) “Taxable person” shall mean any person who carries out an independent economic activity, whatever the purpose or results of that activity.

(2) “Independent economic activity” shall mean the activities of producers, traders and persons supplying services, including mining and agriculture, as well as the exercise of a profession, including the professions of private bailiff and notary. “Independent economic activity” shall also mean any activity carried out on a systematic or professional basis for consideration, including the exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis. ...’

10 Article 6(2)(4) of the ZDDS classifies ‘the actual making available of goods to a person who is acting in his own name and on behalf of another person’ as a supply of goods.

11 According to Article 8 of the ZDDS, a service for the purposes of that law is anything which has a value and which is distinct from goods and from money in circulation and foreign currencies which are used as means of payment.

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

12 Mr Kostov is a self-employed private bailiff in Bulgaria. He is registered for the purposes of VAT pursuant to Article 96(1) of the ZDDS.

13 On 13 November 2008, Mr Kostov concluded a contract of agency ('the contract') with Bon Marin AD ('Bon Marin'). Under that contract, Mr Kostov undertook, as agent for Bon Marin, to make bids in the context of three auctions of three plots of partially built-upon land which were owned by the State under private law, were managed by the Ministry of Defence and covered an area of approximately 40 000 m². He also undertook to transfer ownership in those properties to Bon Marin in the event of a successful bid.

14 The principal, Bon Marin, undertook to provide the financial resources required for the purchases envisaged by the contract, to acquire ownership of the properties obtained by Mr Kostov in performing the contract of agency and to pay him the agreed remuneration in the amount of BGN 50 000 (approximately EUR 25 500).

15 That remuneration was paid on the same day as that of signature of the contract, which provided, moreover, that Mr Kostov would retain the remuneration in the event that the bids were unsuccessful.

16 In May 2009, Mr Kostov acquired from the State ownership of the properties referred to in the contract.

17 On 30 June 2009, with the agreement of the agent, Bon Marin assigned to Bleyk Siy Kapital EOOD all of its rights and obligations under the contract.

18 The VAT dispute arose from a tax adjustment notice drawn up by the tax inspectorate with responsibility for the city of Varna. According to that notice, Mr Kostov had received his remuneration of BGN 50 000 in consideration for a taxable supply of services within the meaning of Article 12 of the ZDDS, had made the supply as a taxable person for VAT purposes and was therefore required to pay VAT on that amount.

19 Following an administrative appeal, the tax adjustment notice was upheld by the Direktor.

20 Mr Kostov brought an action against the Direktor's notice, claiming that he had provided the service on an occasional basis and not in connection with his economic activity as a self-employed private bailiff, the only activity for which he was registered for VAT.

21 In those circumstances, the Administrativen sad – Varna decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is a natural person who is registered for VAT by reason of his activity as a private bailiff to be regarded as a taxable person within the meaning of Article 9(1) of [the VAT] Directive ... and required, pursuant to Article 193 of [the VAT] Directive ..., to pay VAT in respect of a service which he has provided on an occasional basis and not in connection with his activity as a private bailiff?'

Consideration of the question referred

22 By its question, the national court asks, in essence, whether Article 9(1) of the VAT Directive is to be interpreted as meaning that a person who is taxable for VAT purposes in respect of his activities as a self-employed bailiff must be regarded as a 'taxable person' in respect of any other economic activity carried out occasionally.

Preliminary remark

23 In answering this question, it should be noted at the outset that, whilst the national court as well as the Direktor and the Bulgarian and Romanian Governments base their reasoning on the existence of a contract of agency and a supply of services by the agent, the European Commission considers that a contract under which commission is payable, within the meaning of Article 14(2)(c) of the VAT Directive, is at issue in the main proceedings and that the present case therefore concerns a supply of goods (property).

24 In that regard, it is to be remembered that it is not for the Court to rule on the interpretation and applicability of provisions of national law or to establish the facts relevant to a decision in the main proceedings.

25 The Court must take account, under the division of jurisdiction between the Community Courts and the national courts, of the factual and legislative context, as described in the order for reference, in which the question put to it is set (see Case C-153/02 *Neri* [2003] ECR I-13555, paragraphs 34 and 35, and Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Oliveri* [2004] ECR I-5257, paragraph 42).

26 Accordingly, it must be found that in its order for reference the national court classified the contract as a 'contract of agency'. Consequently, the reasoning which follows presupposes that a contract of agency exists and thus that services are supplied.

Substance

27 First of all, it should be recalled that, under the first subparagraph of Article 9(1) of the VAT Directive, "[t]axable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity'. Also, in accordance with the second subparagraph of Article 9(1), 'any' activity of producers, traders or persons supplying services, in essence, is to be regarded as economic activity.

28 Next, whilst it is true that it may be inferred, upon interpreting Article 12(1) of the VAT Directive *a contrario*, that a person who carries out only occasionally a transaction generally effected by a producer, trader or person supplying services is not, in principle, to be considered a 'taxable person' within the meaning of that directive, it does not, however, necessarily follow from that provision that a taxable person acting in a certain field of activity who occasionally carries out a transaction falling within another field of activity is not liable to VAT on that transaction.

29 On the contrary, as follows from recital 5 in the preamble to the VAT Directive, '[a] VAT system achieves the highest degree of simplicity and of neutrality when the tax is levied in as general a manner as possible'. In addition, recital 13 states that, '[i]n order to enhance the non-discriminatory nature of the tax, the term "taxable person" should be defined in such a way that the Member States may use it to cover persons who occasionally carry out certain transactions'.

30 Accordingly, Article 12(1) of the VAT Directive should be interpreted as referring only to persons who are not already a taxable person for VAT purposes in respect of their main economic activities. On the other hand, in the case of such a taxable person, like Mr Kostov, it would not be consistent with, in particular, the objective that VAT should be levied with simplicity and in as general a manner as possible to interpret the second subparagraph of Article 9(1) of the VAT Directive as meaning that the term 'economic activity' appearing in that provision does not encompass an activity which, whilst carried out only occasionally, falls within the general definition of that term in the first sentence of that provision and is carried out by a taxable person who also

carries out, permanently, another economic activity for the purposes of the VAT Directive.

31 Having regard to the foregoing, the answer to the question referred is that Article 9(1) of the VAT Directive is to be interpreted as meaning that a natural person who is already a taxable person for VAT purposes in respect of his activities as a self-employed bailiff must be regarded as a 'taxable person' in respect of any other economic activity carried out occasionally, provided that that activity constitutes an activity within the meaning of the second subparagraph of Article 9(1) of the VAT Directive.

Costs

32 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 (First Chamber) hereby rules:

Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax is to be interpreted as meaning that a natural person who is already a taxable person for value added tax purposes in respect of his activities as a self-employed bailiff must be regarded as a 'taxable person' in respect of any other economic activity carried out occasionally, provided that that activity constitutes an activity within the meaning of the second subparagraph of Article 9(1) of Directive 2006/112.

[Signatures]

* Language of the case: Bulgarian.