JUDGMENT OF THE COURT (Sixth Chamber)

27 March 2014 (*)

(Request for a preliminary ruling – Taxation – VAT – Scope – Determination of the taxable amount – Concept of ‘subsidy directly linked to the price’ – Payment of a lump sum by the national sickness insurance fund to residential care homes for the elderly)

In Case C?151/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour administrative d’appel de Versailles (France), made by decision of 7 March 2013, received at the Court on 25 March 2013, in the proceedings

**Le Rayon d’Or SARL**

v

**Ministre de l’Économie et des Finances,**

THE COURT (Sixth Chamber),

composed of A. Borg Barthet, President of the Chamber, M. Berger and F. Biltgen (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 8 January 2014,

after considering the observations submitted on behalf of:

– Le Rayon d’Or SARL, by A. Grousset, E. Ashworth and F. Bertacchi, avocats,

– the French Government, by D. Colas and J.?S. Pilczer, acting as Agents,

– the European Commission, by C. Soulay and L. Lozano Palacios, acting as Agents,

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

gives the following

**Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 11A(1)(a) 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 Article 73 of 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 Le Rayon d'Or SARL ('Rayon d'Or'), a company established in France, and the tax authority, represented by the Ministre de l'Économie et des Finances (Minister for the Economy and Finance), concerning the calculation of the deductible proportion of value added tax ('VAT') applicable to residential care homes for the elderly ('RCHEs').

**Legal context**

*European Union law*

3 Article 2(1) of the Sixth Directive is worded as follows:

'The following shall be subject to [VAT]:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such.'

4 Article 11A(1)(a) of the Sixth Directive provides:

'Within the territory of the country

1. The taxable amount shall be:

(a) in respect of supplies of goods and services …, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies.'

5 Article 13A(1) of the Sixth Directive lists a series of exemptions from VAT for certain activities in the public interest. Member States are thus required to exempt, under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse, in particular:

'(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.'

6 Pursuant to Articles 411 and 413 thereof, the VAT Directive repealed and replaced, as from 1 January 2007, the European Union legislation on VAT, including the Sixth Directive. The provisions of the VAT Directive are therefore identical, essentially, to the corresponding provisions of the Sixth Directive.

7 Under Article 2(1) of the VAT Directive:

'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;

…’

8 Article 73 of the VAT Directive, which has replaced Article 11A(1)(a) of the Sixth Directive, provides:

‘In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.

9 Article 132(1)(b) and (c) of the VAT Directive reads as follows:

‘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.’

10 Article 174(1) of the VAT Directive provides:

‘The deductible proportion shall be made up of a fraction comprising the following amounts:

(a) as numerator, the total amount, exclusive of VAT, of turnover per year attributable to transactions in respect of which VAT is deductible pursuant to Articles 168 and 169;

(b) as denominator, the total amount, exclusive of VAT, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which VAT is not deductible.

Member States may include in the denominator the amount of subsidies, other than those directly linked to the price of supplies of goods or services referred to in Article 73.’

*French law*

11 As stated in the order for reference, Article 256 of the Code général des impôts (French General Tax Code; ‘the CGI’) provides:

‘The supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such shall be subject to [VAT].’

12 In accordance with Article 261(4)(1b) of the CGI, ‘the care provided by the private care homes for the elderly mentioned in Article L. 312-1(I)(6) of the Code de l’action sociale et des familles (Family and Social Action Code), which is covered by a global yearly lump-sum healthcare

payment pursuant to Article L. 174-7 of the Code de la sécurité sociale (Social Security Code) shall be exempted from [VAT]'.

13 Paragraph 266(1)(a) of the CGI provides:

'1. The taxable amount shall be:

(a) in respect of supplies of goods and services …, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies.'

14 Article L. 174?7 of the Code de la sécurité sociale states:

'Expenses relating to medical care given to insured persons and recipients of social assistance in the homes and facilities listed in Article L. 162-24-1 shall be borne by health insurance schemes or covered by social assistance, in the manner laid down by regulation, using lump-sum formulae where appropriate.'

15 In accordance with Article L. 313-12 of the Code de l'action sociale et des familles, RCHEs which have signed a multi-annual agreement with the President of the General Council and the competent State authority are to receive a global lump-sum payment in respect of the care which they provide.

16 Article R. 314?158 of the Code de l'action sociale et des familles reads as follows:

'The care provided by the establishments or sections thereof referred to in Article L. 313?12 … involve:

1. A daily rate for accommodation,

2. A daily rate for dependency,

3. A daily rate for care.'

17 Article R. 314?161 of the Code de l'action sociale et des familles provides:

'The tariff relating to healthcare shall cover the medical and paramedical services needed to treat the somatic and psychological ailments of persons residing in the home and the paramedical services corresponding to healthcare that are connected with the dependency level of the residents.'

18 According to the statements of the referring court, the detailed rules for calculating the 'healthcare lump sum' take account of the number of residents hosted by each home and their dependency level, which are assessed in accordance with the conditions set out in Articles R. 314-170 and R. 314-171 of the Code de l'action sociale et des familles, and of historical coefficients which are determined at national level and updated each year on the basis of the average expenses of all RCHEs.

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

19 Rayon d'Or, which operates an RCHE, took the view that the sums paid to it by the sickness insurance fund as the 'healthcare lump sum' fell outside the scope of VAT and that they should therefore not be taken into account either when determining the deductible proportion of VAT for

2006 to 2008. In respect of those years, it therefore undertook a rectification of the deductible amount and requested a reimbursement of EUR 60 064 from the tax authority.

20 Since the tax authority rejected that request, Rayon d'Or brought an action before the Tribunal administratif de Montreuil (Administrative Court, Montreuil). Since that court did not uphold its claim, Rayon d'Or appealed before the Cour administrative d'appel de Versailles (Administrative Court of Appeal, Versailles).

21 Before that court, Rayon d'Or reiterated its view that the national provisions, by providing for the exemption from VAT of sums corresponding to the 'healthcare lump sum' which, in its view, already fall outside the scope of that tax, is contrary to the Sixth Directive and Directive 2006/112/EC. In support of that assertion, Rayon d'Or claims that the detailed rules for calculating the 'healthcare lump sum' do not permit it to be classed as a 'subsidy which is directly linked to the price' of the healthcare services provided by RCHEs to their residents.

22 Firstly, the services rendered to residents are neither defined in advance nor personalised and the residents are not made aware of the price of those services. Next, since the national legislature has established the principle that medical care should be provided free of charge in RCHEs, the residents are guaranteed to receive that care free of charge regardless of the amount of the subsidy granted to the home and how far it meets the costs it is intended to cover. Finally, the amount of the subsidy received by a given home does not coincide with the actual cost of the healthcare.

23 The tax authority submitted, principally, that the 'healthcare lump sum' is not to be regarded as a subsidy but as a pricing system and that the fact that the pricing is established on the basis of healthcare needs does not prevent the services in question from being classified as 'services effected for consideration'. In the alternative, that authority argued, inter alia, that there is a direct and immediate link between the disbursement of the 'healthcare lump sum' and the healthcare services rendered to recipients. The service does not necessarily have to be personalised but may simply have the potential to be personalised. In addition, Rayon d'Or is legally obliged to provide the healthcare in question, the price of which does not have to be paid by the recipients of the healthcare or be commensurate with the value of the services.

24 In those circumstances, the Cour administrative d'appel de Versailles decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 11A(1)(a) of the Sixth Directive, incorporated in Article 73 of [the VAT Directive], be interpreted as meaning that the 'healthcare lump sum' disbursed by sickness insurance funds to [RCHEs] pursuant to Article L. 174-7 of the Code de la sécurité sociale and exempted from [VAT] under Article 261(4)(1b) of the [CGI] represents a subsidy which is directly linked to the price of the healthcare services provided to residents and which thus falls within the scope of [VAT]?'

**Consideration of the question referred**

25 As a preliminary point, it should be noted that, in the context of the procedure established by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (see, inter alia, Case C?286/05 *Haug* EU:C:2006:296, paragraph 17; Case C?45/06 *Campina* EU:C:2007:154, paragraph 30; and Case C?361/11 *Hewlett-Packard Europe* EU:C:2013:18, paragraph 35).

26 To that end, the Court may extract from all the information provided by the national court, in

particular from the grounds of the decision to make the reference, the legislation and the principles of European Union law that require interpretation in view of the subject-matter of the dispute in the main proceedings (see Case C?249/11 *Byankov* EU:C:2012:608, paragraph 58).

27 In the present case, it is apparent from the order for reference that, in essence, the main proceedings turn on the question whether a lump-sum payment such as the ‘healthcare lump sum’ falls within the scope of VAT and must be taken into consideration in the calculation of the deductible proportion.

28 Accordingly, the question must be understood as asking, in essence, whether Article 11A(a) of the Sixth Directive and Article 73 of the VAT Directive are to be interpreted as meaning that a lump-sum payment such as the ‘healthcare lump sum’ at issue in the main proceedings constitutes the consideration for the healthcare provided for consideration by an RCHE to its residents and, on that basis, falls within the scope of VAT.

29 With a view to answering that question, it must be borne in mind, firstly, that, in accordance with Article 2 of the Sixth Directive, which defines the scope of VAT, ‘the supply of … services effected for consideration’ is subject to VAT and that, in accordance with the Court’s settled case-law, a supply of services is effected ‘for consideration’, within the meaning of Article 2(1) of the Sixth Directive, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient (see, inter alia, Case C-16/93 *Tolsma* EU:C:1994:80, paragraph 14; Case C?174/00 *Kennemer Golf* EU:C:2002:200, paragraph 39; and Case C?37/08 *RCI Europe* EU:C:2009:507, paragraph 24).

30 Secondly, the Court has held that subsidies directly linked to the prix of a taxable transaction are only one situation amongst others referred to in Article 11A(1)(a) of the Sixth Directive and that, irrespective of the particular situation in question, the taxable amount in respect of a supply of services is everything which makes up the consideration for the service (see, to that effect, Case C?353/00 *Keeping Newcastle Warm* EU:C:2002:369, paragraphs 23 and 25).

31 Since Article 73 of the VAT Directive, which replaced Article 11A(1)(a) of the Sixth Directive, is, in essence, identical to the latter provision, the case-law cited in the two preceding paragraphs and the following discussions apply *mutatis mutandis* to Article 73 of the VAT Directive.

32 It is clear that the ‘healthcare lump sum’ at issue in the main proceedings paid by the national sickness insurance fund to the RCHEs is received by the latter as consideration for the care which they provide, in different forms, to their residents.

33 Firstly, as Rayon d’Or accepted at the hearing, the RCHEs are actually obliged to provide services to their residents in consideration of the payment of that lump sum.

34 Next, it is not a requirement of the directive that, for a supply of goods or services to be effected ‘for consideration’, within the meaning of that directive, the consideration for that supply must be obtained directly from the person to whom those goods or services are supplied, since it may be obtained from a third party (see, to that effect, Joined Cases C?53/09 and C?55/09 *Loyalty Management UK and Baxi Group* EU:C:2010:590, paragraph 56).

35 The fact that, in the main proceedings, the direct beneficiary of the services in question is not the national sickness insurance fund which pays the lump sum but the insured person is not, contrary to the submissions of Rayon d'Or, such as to break the direct link between the supply of services made and the consideration received.

36 Finally, it is clear from the Court's case-law that where, as in the main proceedings, the supply of services in question is characterised, inter alia, by the permanent availability of the service provider to supply, at the appropriate time, the healthcare services required by the residents, it is not necessary, in order to recognise that there is a direct link between that service and the consideration received, to establish that a payment relates to a personalised supply of healthcare at a specific time carried out at the request of a resident (see, to that effect, *Kennemer Golf* EU:C:2002:200, paragraph 40).

37 Accordingly, the fact, in the main proceedings, that the healthcare provided to residents is neither defined in advance nor personalised and that the payment is made in the form of a lump sum is also not such as to affect the direct link between the supply of services made and the consideration received, the amount of which is determined in advance on the basis of well-established criteria.

38 Having regard to the foregoing considerations, the answer to the question referred for a preliminary ruling is that Article 11A(1)(a) of the Sixth Directive and Article 73 of the VAT Directive must be interpreted as meaning that a lump-sum payment such as the 'healthcare lump sum' at issue in the main proceedings constitutes the consideration for the healthcare provided for consideration by an RCHE to its residents and, on that basis, falls within the scope of VAT.

**Costs**

39 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 (Sixth Chamber) hereby rules:

**Article 11A(1)(a) 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 and Article 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a lump-sum payment such as the 'healthcare lump sum' at issue in the main proceedings constitutes the consideration for the healthcare provided for consideration by a residential care home for the elderly to its residents and, on that basis, falls within the scope of value added tax.**

[Signatures]

* Language of the case: French.