JUDGMENT OF THE COURT (Fifth Chamber)

9 December 2015 (*)

(Reference for a preliminary ruling — Sixth VAT Directive — Exemptions — Article 13B(d)(6) — Special investment funds — Meaning — Investments in immovable property — Management of special investment funds — Meaning — Actual management of a property)

In Case C?595/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 1 November 2013, received at the Court on 21 November 2013, in the proceedings

Staatssecretaris van Financiën

v

Fiscale Eenheid X NV cs,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Šváby, A. Rosas (Rapporteur), E. Juhász and C. Vajda, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 4 March 2015,

after considering the observations submitted on behalf of:

– Fiscale Eenheid X NV cs, by T. Scheer, advocaat, K. Bruins and M. Morawski, adviseurs,

– the Netherlands Government, by M. Bulterman, B. Koopman and H. Stergiou, acting as Agents,

– the Swedish Government, by A. Falk, C. Meyer-Seitz, U. Persson, E. Karlsson, L. Swedenborg and C. Hagerman, acting as Agents,

– the United Kingdom Government, by L. Christie, acting as Agent, and by R. Hill, Barrister,

– the European Commission, by W. Roels and C. Soulay, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 May 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 13B(d)(6) 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), as amended by Council Directive 91/680/EEC of 16 December 1991 (OJ 1991 L 376, p. 1; 'the Sixth Directive').

2 The request has been made in proceedings between the Staatssecretaris van Financiën (State Secretary for Finance) and Fiscale Eenheid X NV cs ('X') concerning a notice of additional assessment to value added tax (VAT) issued to X in respect of 1996.

Legal context

EU law

VAT legislation

3 Under Article 2(1) of the Sixth Directive, inter alia 'the supply of ... services effected for consideration within the territory of the country by a taxable person acting as such' is to be subject to VAT.

4 The second subparagraph of Article 4(4) of the Sixth Directive states that '… each Member State may treat as a single taxable person persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organisational links'.

5 Article 13B(d)(6) of the Sixth Directive is worded 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 the exemptions and of preventing any possible evasion, avoidance or abuse:

...

(d) the following transactions:

...

6. management of special investment funds as defined by Member States'.

6 The wording of Article 13B(d)(6) of the Sixth Directive is, in essence, the same as that of Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), which repealed and replaced the Sixth Directive with effect from 1 January 2007.

Legislation relating to supervision of investments

7 Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ 1985 L 375, p. 3; 'the UCITS Directive') states, in the first and second recitals in the preamble thereto:

‘Whereas the laws of the Member States relating to collective investment undertakings differ appreciably from one state to another, particularly as regards the obligations and controls which are imposed on those undertakings; whereas those differences distort the conditions of competition between those undertakings and do not ensure equivalent protection for unit-holders;

Whereas national laws governing collective investment undertakings should be coordinated with a view to approximating the conditions of competition between those undertakings at Community level, while at the same time ensuring more effective and more uniform protection for unit-holders; whereas such coordination will make it easier for a collective investment undertaking situated in one Member State to market its units in other Member States.’

8 The scope of application of the UCITS Directive is defined by the sixth recital as follows:

‘Whereas the coordination of the laws of the Member States should be confined initially to collective investment undertakings other than of the closed-ended type which promote the sale of their units to the public in the Community and the sole object of which is investment in transferable securities ...; whereas regulation of the collective investment undertakings not covered by the Directive poses a variety of problems which must be dealt with by means of other provisions, and such undertakings will accordingly be the subject of coordination at a later stage; …’

9 As amended by Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002 (OJ 2002 L 41, p. 35), not applicable at the material time, the UCITS Directive provides in Article 1(1) and (2):

‘1. The Member States shall apply this Directive to undertakings for collective investment in transferable securities (hereinafter referred to as UCITS) situated within their territories.

2. For the purposes of this Directive, and subject to Article 2, UCITS shall be undertakings:

– the sole object of which is the collective investment in transferable securities and/or in other liquid financial assets referred to in Article 19(1) of capital raised from the public and which operates on the principle of risk-spreading and

– the units of which are, at the request of holders, re-purchased or redeemed, directly or indirectly, out of those undertakings’ assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such re-purchase or redemption.’

10 In accordance with the second subparagraph of Article 5(2) of the UCITS Directive, as amended by Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 (OJ 2002 L 41, p. 20), not applicable at the material time, ‘[t]he activity of management of unit trusts/common funds and of investment companies includes, for the purpose of this Directive, the functions mentioned in Annex II which are not exhaustive’.

11 Annex II mentions the following as ‘[f]unctions included in the activity of collective portfolio management’:

‘– Investment management.

– Administration:

(a) legal and fund management accounting services;

(b) customer inquiries;

(c) valuation and pricing (including tax returns);

(d) regulatory compliance monitoring;

(e) maintenance of unit-holder register;

(f) distribution of income;

(g) unit issues and redemptions;

(h) contract settlements (including certificate dispatch);

(i) record keeping.

– Marketing.'

12 The supervision of investments was strengthened with the adoption of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ 2011 L 174, p. 1), which is not, however, applicable to the facts of the main proceedings. It is apparent from recitals 34 and 58 in the preamble to that directive that it also applies to real estate funds.

Netherlands law

13 Under Article 7(4) of the 1968 Netherlands Law on turnover tax (Wet op de Omzetbelasting 1968), as applicable to the case in the main proceedings ('the Law on VAT'), '[n]atural persons and bodies within the meaning of the General law on State taxation [(Algemene wet inzake rijksbelastingen)] who are entrepreneurs within the meaning of this article, who reside or are established in the Netherlands or have a permanent establishment there and are bound by financial, economic and organisational links such that they constitute a unit, are regarded, whether or not at the request of one or more of them, by decision, subject to appeal, of the inspector, as a single entrepreneur from the first day of the month following that in which the inspector reached that decision. The rules governing the formation, alteration or termination of the single taxable unit may be established by ministerial decree.'

14 Article 11(1)(i)(3) of the Law on VAT provides, in essence, that the management of assets pooled, by investment funds and investment companies, for the purposes of collective investment is to be exempt from VAT.

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

15 X is a fiscal entity within the meaning of Article 7(4) of the Law on VAT, that is to say, a taxable person as referred to in the second subparagraph of Article 4(4) of the Sixth Directive.

16 A Beheer NV ('A') belongs to that fiscal entity.

17 In 1996, A entered into contracts for the provision of various services with three companies established in the Netherlands. Those companies do not belong to X. They were founded by a number of pension funds. After they were established, they issued holdings and certificates of holdings which were transferred to third parties. Their activities consist in the acquisition of shareholders or certificate holders and the purchase and sale of immovable property and its

management. They have no employees. The shareholders require those companies to produce results in the form of payments of dividends.

18 It is apparent from those contracts that A carried out the following activities for those companies, for consideration:

(a) all tasks falling to A as a result of its duties as the client's director in accordance with the company's statutes;

(b) all executive tasks falling to the client as a result of statutory requirements, company statutes, regulations and administrative decisions;

(c) management of the client's assets, as described in Annex I to the contracts;

(d) financial reporting, automated data processing and internal audit;

(e) dealing with the client's assets, including the acquisition and sale of immovable property; and

(f) the acquisition of shareholders or certificate holders.

19 Annex I, referred to at point (c) above, provides as follows:

'The provision of services with respect to management ... covers:

A. Property management:

1. supervision of the immovable property and its use and, to that end, maintenance of contact with tenants;

2. on behalf of the client, engagement of estate agents where properties are empty; assessment of tenants;

3. inspection of any premises due to become available and the compilation of reports on their condition;

4. rent collection ... and debt management; processing of rent allowances;

5. budgeting for and arranging major maintenance works as well as the technical assessment and supervision of the execution thereof …;

6. arranging ordinary maintenance work and supervision thereof;

7. arranging ancillary supplies and services; monitoring the quality thereof and billing tenants for sums due in that respect;

8. administrative processing of all of the above; and

9. day-to-day legal matters; implementation of rent increases and extensions of tenancy agreements.

...'

20 All tasks falling to A under the contracts at issue in the main proceedings are carried out by A itself or by third parties on its behalf and under its responsibility. A was remunerated for those

tasks by each of the companies concerned in the main proceedings, such remuneration being set at 8% of the theoretical annual rental income from the immovable property forming part of the assets of the company concerned.

21 X did not account for VAT on the remuneration received from those three property companies, taking the view that the services provided either by itself or by third parties under its responsibility were exempt as provided for in Article 11(1)(i)(3) of the Law on VAT.

22 The Inspector of the national tax authority found, however, that only the activities referred to in points (e) and (f) of the management contracts at issue, namely the acquisition and sale of immovable property and the acquisition of shareholders or certificate holders, were covered by that exemption. He therefore issued X with a notice of additional assessment to VAT in respect of the period from 1 January to 31 December 1996 inclusive.

23 Having received an objection to that notice, the Inspector of the national tax authority reduced the amount assessed, but maintained that some of the services provided by A were not covered by the exemption. X took the view that the reduction was insufficient and brought an action against the decision of the Inspector of the national tax authority before the Rechtbank Breda (District Court, Breda). That court declared the action well founded, annulled the Inspector's decision and granted a more substantial reduction.

24 The Inspector of the national tax authority then lodged an appeal against the judgment of the Rechtbank Breda (District Court, Breda) with the Gerechtshof te 's Hertogenbosch (Regional Court of Appeal, 's Hertogenbosch), which upheld the decision given at first instance.

25 The State Secretary for Finance brought an appeal in cassation against the judgment of the Gerechtshof te 's Hertogenbosch (Regional Court of Appeal, 's Hertogenbosch) before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands). In his Opinion, the Advocate General of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) moved that the appeal be declared unfounded.

26 The Hoge Raad der Nederlanden (Supreme Court of the Netherlands) questions whether investment companies such as the companies concerned, in which capital is pooled by more than one investor with a view to purchasing, owning, managing and selling immovable property in order to derive a profit therefrom which will be distributed to all unit-holders in the form of a dividend, those unit-holders benefiting also from an increase in the value of their holding, are to be regarded as 'special investment funds' within the meaning of Article 13B(d)(6) of the Sixth Directive. In particular, it asks whether the fact that funds are invested in immovable property precludes the application of that provision.

27 In the event that the companies concerned may be regarded as 'special investment funds' within the meaning of Article 13B(d)(6) of the Sixth Directive, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) asks whether the actual management of immovable property, covering everything connected with the letting of that property and its maintenance, which those companies have sub-contracted to a third party, namely A, constitutes a 'management' activity within the meaning of that provision.

28 In those circumstances the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 13B(d)(6) of the Sixth Directive to be interpreted as meaning that a company which has been set up by more than one investor for the sole purpose of investing the assembled assets

in immovable property may be regarded as a special investment fund within the meaning of that provision?

2. If the answer to Question 1 is in the affirmative: is Article 13B(d)(6) of the Sixth Directive to be interpreted as meaning that the term “management” also covers the actual management of the company’s immovable property, which the company has entrusted to a third party?’

Consideration of the questions referred

The first question, concerning the meaning of ‘special investment fund’

29 By its first question, as is apparent from the order for reference, the referring court asks, in essence, whether Article 13B(d)(6) of the Sixth Directive must be interpreted as meaning that investment companies such as the companies at issue in the main proceedings, in which capital is pooled by several investors with a view to purchasing, owning, managing and selling immovable property in order to derive a profit therefrom which will be distributed to all unit-holders in the form of a dividend, those unit-holders benefiting also from an increase in the value of their holding, may be regarded as ‘special investment funds’ within the meaning of that provision.

30 It should be borne in mind from the outset that, according to settled case-law, whilst the exemptions provided for in, inter alia, Article 13B(d)(6) of the Sixth Directive are autonomous concepts of EU law which must, in principle, be given a common definition in order to avoid divergences in the application of the VAT system from one Member State to another, so that the Member States cannot alter their content, that is not the case where the EU legislature has conferred on the Member States the task of defining certain terms of an exemption (see, to that effect, judgments in *Abbey National*, C?169/04, EU:C:2006:289, paragraphs 38 and 39; *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies*, C?363/05, EU:C:2007:391, paragraphs 19 and 20; *Wheels Common Investment Fund Trustees and Others*, C?424/11, EU:C:2013:144, paragraph 16; and *ATP PensionService*, C?464/12, EU:C:2014:139, paragraph 40).

31 As it is, Article 13B(d)(6) of the Sixth Directive confers upon the Member States the task of defining the meaning of ‘special investment funds’ (see judgments in *Wheels Common Investment Fund Trustees and Others*, C?424/11, EU:C:2013:144, paragraph 16, and *ATP PensionService*, C?464/12, EU:C:2014:139, paragraph 40).

32 The power to define thereby accorded to the Member States is, however, limited by the prohibition on undermining the very terms of the exemption that are employed by the EU legislature. A Member State cannot in particular, without negating the very terms ‘special investment funds’, select from among special investment funds those which are eligible for the exemption and those which are not. That provision thus grants it only the power to define, in its domestic law, the funds which meet the definition of ‘special investment funds’ (see, to that effect, judgments in *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies*, C?363/05, EU:C:2007:391, paragraphs 41 to 43; *Wheels Common Investment Fund Trustees and Others*, C?424/11, EU:C:2013:144, paragraph 17; and *ATP PensionService*, C?464/12, EU:C:2014:139, paragraph 41).

33 The power accorded to the Member States to define the meaning of ‘special investment funds’ must also be exercised consistently with the objectives pursued by the Sixth Directive and with the principle of fiscal neutrality inherent in the common system of VAT (see, to that effect, judgments in *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies*, C?363/05, EU:C:2007:391, paragraphs 22 and 43; *Wheels Common Investment Fund Trustees and Others*, C?424/11, EU:C:2013:144, paragraph 18; and *ATP PensionService*

, C?464/12, EU:C:2014:139, paragraph 42).

34 In that regard it should be observed that the purpose of the exemption of transactions connected with the management of special investment funds is, particularly, to facilitate investment in securities by means of investment undertakings by excluding the cost of VAT and, in that way, ensuring that the common system of VAT is neutral as regards the choice between direct investment in securities and investment through collective investment undertakings (see judgments in *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies*, C?363/05, EU:C:2007:391, paragraph 45; *Wheels Common Investment Fund Trustees and Others*, C?424/11, EU:C:2013:144, paragraph 19; and *ATP PensionService*, C?464/12, EU:C:2014:139, paragraph 43).

35 It must therefore be determined, for the purposes of applying the Sixth Directive, whether companies which have characteristics such as those displayed by the companies at issue in the main proceedings, which have been set up by a number of investors with the sole aim of investing the assembled assets in immovable property, may be regarded as a ‘special investment fund’ within the meaning of Article 13B(d)(6) of the Sixth Directive.

36 It should be borne in mind that funds which constitute undertakings for collective investment in transferable securities within the meaning of the UCITS Directive are special investment funds (see, to that effect, in particular judgments in *Deutsche Bank*, C?44/11, EU:C:2012:484, paragraph 32; *Wheels Common Investment Fund Trustees and Others*, C?424/11, EU:C:2013:144, paragraph 23; and *ATP PensionService*, C?464/12, EU:C:2014:139, paragraph 46). As is clear from Article 1(2) of that directive, undertakings for collective investment in transferable securities are undertakings the sole object of which is the collective investment in transferable securities of capital raised from the public and which operate on the principle of risk-spreading, and the units of which are, at the request of holders, re-purchased or redeemed, directly or indirectly, out of those undertakings’ assets.

37 Furthermore, funds which, without being collective investment undertakings within the meaning of the UCITS Directive, display characteristics identical to theirs and thus carry out the same transactions or, at least, display features that are sufficiently comparable for them to be in competition with such undertakings must also be regarded as special investment funds (see, to that effect, judgments in *Abbey National*, C?169/04, EU:C:2006:289, paragraphs 53 to 56; *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies*, C?363/05, EU:C:2007:391, paragraphs 48 to 51; *Wheels Common Investment Fund Trustees and Others*, C?424/11, EU:C:2013:144, paragraph 24; and *ATP PensionService*, C?464/12, EU:C:2014:139, paragraph 47).

38 However, it must be held that companies such as those at issue in the main proceedings, which have been set up by a number of investors with the sole aim of investing the assets which they have assembled in immovable property cannot be regarded as constituting a collective investment undertaking within the meaning of the UCITS Directive. An investment consisting exclusively of immovable property is not subject to the UCITS Directive, which is applicable, according to Article 1(1) and (2) thereof, only to investments in transferable securities.

39 In order to be capable of being regarded as exempt special investment funds within the meaning of Article 13B(d)(6) of the Sixth Directive, companies such as those at issue in the main proceedings must therefore display characteristics identical to undertakings for collective investment as defined by the UCITS Directive and carry out the same transactions or, at least, display features that are sufficiently comparable for them to be in competition with such undertakings.

40 In that regard, it must be noted as a preliminary point that, as the Advocate General indicated in points 22 to 29 of her Opinion, the exemption referred to in Article 13B(d)(6) of the Sixth Directive applies to investment undertakings that are subject to specific supervision at national level.

41 As the Court has repeatedly observed in connection with the interpretation of the exemption of the management of special investment funds within the meaning of that provision, the legislation on VAT was harmonised before harmonisation of the legislation relating to the authorisation and supervision of investment funds and, in particular, the UCITS Directive (judgments in *Abbey National*, C?169/04, EU:C:2006:289, paragraph 55, and *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies*, C?363/05, EU:C:2007:391, paragraph 32).

42 As the Advocate General noted in point 21 of her Opinion, the Member States originally determined that investment funds were funds regulated at national level and subject, therefore, to licensing and oversight rules, namely authorisation by the public authorities and control, with the aim particularly of protecting investors. Referring to the national law of the Member States for the definition of ‘special investment funds’ has thus enabled the exemption under Article 13B(d)(6) of the Sixth Directive to be reserved to investments that are subject to specific State supervision.

43 It is evident from the first and second recitals in the preamble to the UCITS Directive that, on account of the differences between the laws of the Member States governing collective investment undertakings, particularly as regards the obligations and controls which are imposed on those undertakings, the EU legislature wished to coordinate those laws with a view to approximating at EU level the conditions of competition between those undertakings, ensuring more effective and more uniform protection for unit-holders, and making it easier for a collective investment undertaking situated in one Member State to market its units in other Member States.

44 The UCITS Directive thus established common basic rules for the authorisation, structure and activities of collective investment undertakings situated in the Member States and the information they must publish.

45 The introduction at EU level by the UCITS Directive of the first measures to regulate the supervision of investment funds limited the discretion of Member States to define special investment funds as referred to in Article 13B(d)(6) of the Sixth Directive.

46 The Member States’ power to define was thus overlaid by the coordination, at EU level, of laws relating to the supervision of investments. The concept of ‘special investment funds’ within the meaning of Article 13B(d)(6) of the Sixth Directive is therefore determined both by EU law and by national law.

47 The Court has thus held that investments covered by the UCITS Directive and subject in that context to specific State supervision, on the one hand, and funds which, without being collective investment undertakings within the meaning of that directive, display characteristics identical to theirs and thus carry out the same transactions or, at least, display features that are sufficiently comparable for them to be in competition with such undertakings, on the other, must be regarded as exempt special investment funds within the meaning of that provision (judgments in *Wheels Common Investment Fund Trustees and Others*, C?424/11, EU:C:2013:144, paragraphs 23 and 24, and *ATP PensionService*, C?464/12, EU:C:2014:139, paragraphs 46 and 47).

48 As the Advocate General stated in point 27 of her Opinion, only investment funds that are subject to specific State supervision can be subject to the same conditions of competition and

appeal to the same circle of investors. Those other types of investment funds may therefore, in principle, be eligible for the exemption in Article 13B(d)(6) of the Sixth Directive if the Member States provide for specific State supervision of those funds also.

49 It follows that, as regards the main proceedings, an investment consisting exclusively of immovable property and not subject to the supervisory rules laid down by EU law as applicable in 1996, namely the UCITS Directive, cannot constitute a special investment fund within the meaning of Article 13B(d)(6) of the Sixth Directive unless national law provides for specific State supervision in respect of such a fund.

50 Since it cannot be determined from the information provided by the referring court whether that is the case in the main proceedings, it is for the referring court to make that assessment.

51 In case the referring court should find that the three companies to which A supplied various services were subject to specific State supervision, it is necessary to go on to consider whether those companies display the other characteristics required in order for them to be regarded as a special investment fund that is eligible for exemption in the light of the objective of Article 13B(d)(6) of the Sixth Directive and the principle of fiscal neutrality.

52 In that regard, X and the European Commission are of the opinion that the characteristics of the companies at issue in the main proceedings correspond to those of a special investment fund as determined in the case-law of the Court. An investment fund is thus comparable to collective investment undertakings as defined by the UCITS Directive if persons have purchased participation rights in that fund, if the return on the investment thus made depends on the performance of the investments made by the fund's managers over the period for which those persons hold those rights, and if the holders are entitled to profits or bear the risk connected with the management of the fund (see, to that effect, judgment in *Wheels Common Investment Fund Trustees and Others*, C?424/11, EU:C:2013:144, paragraph 27). In the same vein, the Court has held that company pension funds may be regarded as special investment funds if they are funded by the persons to whom the retirement benefit is to be paid, if the savings are invested using a risk-spreading principle, and if the pension customers bear the investment risk (judgment in *ATP PensionService*, C?464/12, EU:C:2014:139, paragraph 59).

53 That would appear to be the case as regards the companies at issue in the main proceedings, taking into account the particulars provided by the referring court and the information in the file submitted to the Court.

54 Those companies pool capital from various pension funds with the objective of purchasing, owning, managing and selling immovable property in order to obtain the maximum profit. The companies have issued certificates of holdings which confer on their holders the right to a proportion of the return on those holdings in the form of dividends. The holders of those certificates are also entitled to the relevant company's profit if the value of their holding increases. The investment risk is borne by the unit-holders. The investors who have invested their assets in the capital of one of those companies bear the risk connected with the management of the assets pooled in that company. The investors' profit, in the form of dividends, depends on the return on the assets of the company concerned. The capital of the companies at issue in the main proceedings is available to various investors who have the option of transferring their certificates to third parties if they wish to do so. In addition, new investors can subscribe and invest further capital in the company concerned.

55 It must be stated that the argument relating to the lack of any spreading of the risks of a real estate fund, put forward by the Swedish Government, cannot be accepted.

56 In that regard, so far as concerns the companies at issue in the main proceedings, it would appear to follow from the information given at the hearing and available from the file submitted to the Court that the assembled assets are invested using a risk-spreading principle. The funds are invested in different types of immovable property, both residential and commercial, and also in different geographical areas.

57 As the Commission notes, the fact that the investments in this case are in immovable property is of no consequence to the nature of the activities of the three companies at issue in the main proceedings, that is the collective management of funds. Article 13B(d)(6) of the Sixth Directive refers generally to 'special investment funds', without mentioning any specific form of investment or making a distinction on the basis of the assets in which the funds are invested. There is thus nothing to indicate that the exemption in that provision applies only to investment in securities and that other forms of investment are excluded from that exemption. Neither the context nor the wording of Article 13B(d)(6) of the Sixth Directive nor the objective of that provision would indicate that the EU legislature intended to limit the application of that provision only to collective investment undertakings investing in transferable securities.

58 The referring court asks, however, whether the objective of the exemption in that provision, as formulated by the Court, can be achieved in the case of immovable property, noting, in particular, that the case-law of the Court in respect of that exemption relates only to investments in transferable securities.

59 It must be observed in that regard, as X indicates, that the fact that the existing case-law of the Court relates to situations in which the collective assets were invested in securities is accounted for by the subject-matter of the proceedings brought before the Court until now, inasmuch as the Court has not been called upon to analyse matters concerning investments in other assets.

60 As the sixth recital in the preamble to the UCITS Directive and Article 24 thereof indicate, and as is apparent from Article 19(1)(e) of that same directive, as amended by Directive 2001/108, not applicable at the material time in the main proceedings, the coordination of legislation in relation to supervision is intended to cover not only UCITS but also other collective investment undertakings (see, to that effect, judgment in *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies*, C?363/05, EU:C:2007:391, paragraphs 32 and 34). Investment in transferable securities is therefore only one particular form of regulated investment.

61 The fact that Directive 2011/61, which represents at EU level a further step in the harmonisation of specific State supervision of investments, also applies to real estate funds, as indicated inter alia by recital 34 in the preamble thereto, supports that interpretation.

62 In that context, not allowing property companies such as those at issue in the main proceedings to benefit from the exemption provided for in Article 13B(d)(6) of the Sixth Directive on the ground that the management of property relates to immovable property would be contrary to the principle of fiscal neutrality.

63 In so far as investments, whether composed of transferable securities or immovable property, are subject to comparable specific State supervision, there is direct competition between those forms of investment. In both cases, what matters for the investor is the interest he derives from those investments. According to settled case-law, the principle of fiscal neutrality precludes treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes (see judgment in *Wheels Common Investment Fund Trustees and Others*,

C?424/11, EU:C:2013:144, paragraph 21 and the case-law cited).

64 Consequently, the answer to the first question is that Article 13B(d)(6) of the Sixth Directive must be interpreted as meaning that investment companies such as the companies at issue in the main proceedings, in which capital is pooled by several investors who bear the risk connected with the management of the assets assembled in those companies with a view to purchasing, owning, managing and selling immovable property in order to derive a profit therefrom which will be distributed to all unit-holders in the form of a dividend, those unit-holders benefiting also from an increase in the value of their holding, may be regarded as ‘special investment funds’ within the meaning of that provision, provided that the Member State concerned has made those companies subject to specific State supervision.

The second question, concerning the meaning of ‘management’

65 By its second question the referring court asks, in essence, whether Article 13B(d)(6) of the Sixth Directive must be interpreted as meaning that the term ‘management’ which appears in that provision also covers the actual management of the immovable property of a special investment fund, such management having been entrusted by that fund to a third party.

66 It is apparent from the grounds of the order for reference that ‘third party’ means A, which was responsible for all management tasks, including administration, on behalf of the three companies concerned in the main proceedings, and, moreover, that the actual management of an immovable property includes in particular its letting, management of existing tenancies, as well as delegation to other third parties and monitoring of maintenance works.

67 It is necessary therefore to determine whether management, within the meaning of Article 13B(d)(6) of the Sixth Directive, relates only to the purchase and sale of the immovable property concerned or also to its actual management.

68 In that regard, it must be observed that, according to settled case-law, the terms used to specify the exemptions in Article 13 of the Sixth Directive are to be interpreted strictly. 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. Accordingly, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 13 must be construed in such a way as to deprive the exemptions of their intended effects (see, in particular, judgments in *Zimmermann*, C?174/11, EU:C:2012:716, paragraph 22 and the case-law cited, and *Mapfre asistencia and Mapfre warranty*, C?584/13, EU:C:2015:488, paragraph 26).

69 As the Court has already noted, the concept of ‘management’ of special investment funds referred to in Article 13B(d)(6) of the Sixth Directive has its own independent meaning in EU law whose content the Member States may not alter (judgment in *Abbey National*, C?169/04, EU:C:2006:289, paragraph 43).

70 That concept is not defined by the EU legislature.

71 The Court has, however, made it clear that the transactions covered by the exemption of management of special investment funds are those which are specific to the business of undertakings for collective investment (judgments in *Abbey National*, C?169/04, EU:C:2006:289, paragraph 63; *Deutsche Bank*, C?44/11, EU:C:2012:484, paragraph 31; and *ATP PensionService*, C?464/12, EU:C:2014:139, paragraph 65). In particular, it has found that management services provided by a third-party manager must, viewed broadly, form a distinct whole and be specific to, and essential for, the management of special investment funds (judgment in *ATP PensionService*,

C?464/12, EU:C:2014:139, paragraph 65).

72 Functions specific to collective investment undertakings include, besides portfolio management functions, functions for administering the collective investment undertakings themselves, such as those set out — under the heading ‘Administration’ — in Annex II to the UCITS Directive (judgment in *ATP PensionService*, C?464/12, EU:C:2014:139, paragraph 66).

73 Thus, the Court has held that not only investment management involving the selection and disposal of the assets under management, but also administration and accounting tasks, in particular services such as computing the amount of income and the price of units or shares, the valuation of assets, accounting, the preparation of statements for the distribution of income, the provision of information and documentation for periodic accounts and for tax, statistical and VAT returns, and the preparation of income forecasts are covered by the concept of ‘management’ of a special investment fund for the purposes of Article 13B(d)(6) of the Sixth Directive (see judgments in *Abbey National*, C?169/04, EU:C:2006:289, paragraphs 26, 63 and 64, and *ATP PensionService* , C?464/12, EU:C:2014:139, paragraph 68).

74 On the other hand, the Court has also already held that the functions of depositary of undertakings for collective investment and mere material or technical supplies, such as the making available of a system of information technology, are not covered by Article 13B(d)(6) of the Sixth Directive (judgment in *Abbey National*, C?169/04, EU:C:2006:289, paragraphs 65 and 71).

75 The governments which submitted observations are of the view that if the property companies at issue in the main proceedings must be regarded as a special investment fund within the meaning of Article 13B(d)(6) of the Sixth Directive, the concept of ‘management’ within the meaning of that provision includes the management of investments, notably decisions and advice concerning the purchase and sale of the securities that constitute those investments, and the services listed in Annex II to the UCITS Directive, under the heading ‘Administration’. However, mere material or technical supplies, such as the making available of a system of information technology or the actual management of the immovable property of the company concerned would not be covered by that concept.

76 X and the Commission maintain, by contrast, that the activities carried out by A for the benefit of the other three contracting parties, as described in paragraph 19 of the present judgment, do fall within the concept of ‘management’ of a special investment fund. All those activities would be intended to optimise the management of the properties which constitute the capital of the three companies with which A has contracted, and, therefore, to increase the value of investors’ holdings in the special investment funds.

77 It must be noted in that regard that the specific activity of a special investment fund consists in the collective investment of capital raised (see, to that effect, judgment in *GfBk*, C?275/11, EU:C:2013:141, paragraphs 22 and 24). Thus, where the assets of such a fund consist of immovable property, its specific activity includes, on the one hand, activities relating to the selection, purchase and sale of immovable property and, on the other, administration and accounting tasks, such as those mentioned in paragraph 73 of the present judgment.

78 By contrast, the actual management of properties is not specific to the management of a special investment fund in that it goes beyond the various activities connected with the collective investment of capital raised. In so far as the actual management of immovable property is intended to preserve and build up the assets invested, its objective is not specific to the activity of a special investment fund but is inherent in any type of investment.

79 Having regard to the foregoing considerations, the answer to the second question is that

Article 13B(d)(6) of the Sixth Directive must be interpreted as meaning that the term ‘management’ which appears in that provision does not cover the actual management of the immovable property of a special investment fund.

Costs

80 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 (Fifth Chamber) hereby rules:

1. **Article 13B(d)(6) 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, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as meaning that investment companies such as the companies at issue in the main proceedings, in which capital is pooled by several investors who bear the risk connected with the management of the assets assembled in those companies with a view to purchasing, owning, managing and selling immovable property in order to derive a profit therefrom which will be distributed to all unit-holders in the form of a dividend, those unit-holders benefiting also from an increase in the value of their holding, may be regarded as ‘special investment funds’ within the meaning of that provision, provided that the Member State concerned has made those companies subject to specific State supervision.**

2. **Article 13B(d)(6) of Sixth Directive 77/388 must be interpreted as meaning that the term ‘management’ which appears in that provision does not cover the actual management of the immovable property of a special investment fund.**

[Signatures]

* Language of the case: Dutch.