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Opinion of Mr Advocate General Jacobs delivered on 13 December 2001. - Kennemer Golf & Country Club v Staatssecretaris van Financiën. - Reference for a preliminary ruling: Hoge Raad der Nederlanden - Netherlands. - Sixth VAT Directive - Article 13A(1)(m) - Exempt transactions - Services connected with the practice of sport - Non-profit-making organisation. - Case C-174/00.

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Opinion of the Advocate-General

1. Under the Sixth VAT Directive, certain services closely linked to sport and supplied by non-profit-making organisations to persons taking part in sport are to be exempted from VAT. Member States may subject that exemption to the condition that the organisation in question must not systematically aim to make a profit, but that any profits arising must not be distributed but assigned to the continuance or improvement of the services supplied.

2. In the present reference for a preliminary ruling, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) seeks guidance on a number of points of interpretation in that regard. Essentially, it asks what aspects of an organisation's activity are to be taken into account when determining whether it is non-profit-making, whether for VAT purposes there is a link between annual membership fees charged by a golf club and the services provided to members and whether the aim of making a systematic surplus to be used for providing sporting services is consistent with non-profit-making status.

The Sixth Directive

3. Under Article 2 of the Sixth Directive, a supply of goods or services effected for consideration by a taxable person acting as such is subject to VAT. According to Article 4(1), a taxable person is one who carries out an economic activity, whatever the purpose or result of that activity. Under Article 4(2), economic activities comprise all activities of producers, traders and persons supplying services, together with the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis. However, certain transactions are or may be exempted from VAT under the terms of the directive.

4. Article 13(A) is headed Exemptions for certain activities in the public interest, and paragraph (1) lists a number of activities which must be exempted by Member States 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.

5. Those activities include, under (m), certain services closely linked to sport or physical education supplied by non-profit-making organisations to persons taking part in sport or physical education. It is that exemption which is relevant in particular to the dispute in the present case. It may be noted

that in most of the language versions the concept of a non-profit-making organisation refers explicitly to one which does not aim to make a profit.

6. There are in all 16 such exemptions, though it is unnecessary to list them all; suffice it to add that Article 13(A)(1)(n) exempts certain cultural services and goods closely linked thereto supplied by bodies governed by public law or by other cultural bodies recognised by the Member State concerned.

7. Article 13(A)(2) provides for a number of limitations, some optional and some mandatory, to be imposed on certain exemptions, including those under Article 13(A)(1)(m) (and (n)). Article 13(A)(2)(a) lists four optional conditions which Member States may impose in each individual case on the granting of such exemptions to bodies other than those governed by public law.

8. The condition set out in the first indent, which is of particular relevance here, is that the bodies in question shall not systematically aim to make a profit, but any profits nevertheless arising shall not be distributed, but shall be assigned to the continuance or improvement of the services supplied.

9. Again, it is not necessary to list the other conditions, but it may be noted that the condition set out in the fourth indent is that exemption of the services concerned shall not be likely to create distortions of competition such as to place at a disadvantage commercial enterprises liable to value added tax.

The Netherlands legislation

10. According to the order for reference, Article 13(A)(1)(m) of the Sixth Directive is transposed into Netherlands law by certain provisions of the Wet op de Omzetbelasting 1968 (1968 Law on Turnover Tax), read in conjunction with the Uitvoeringsbesluit Omzetbelasting 1968 (1968 Decree on the Implementation of Turnover Tax) and Annex B thereto.

11. Article 11(1) of the 1968 Law states:

Subject to conditions to be laid down by administrative regulation, the following shall be exempt from tax:

...

(f) supplies of goods and services of a social and cultural nature to be defined by administrative regulation, provided that the operator does not aim to make a profit and there is no serious distortion of competition in relation to operators who aim to make a profit.

12. Supplies of goods and services of a social or cultural nature are defined by the first paragraph of Article 7 of the implementing decree, in conjunction with Annex B thereto. Item 21 in section (b) of that annex is for supplies made by bodies providing sports facilities, provided that they do not aim to make a profit, the exemption applying solely in respect of such supplies.

13. Furthermore, in an apparently distinct exemption, Article 11(1)(e) of the 1968 Law provides that services supplied to their members by organisations whose aim is the pursuit or promotion of sport are to be exempt from turnover tax. Under Article 11(2), that exemption applies only where the aim is not to make a profit by means of the services concerned. Operating surpluses are also considered as profits in that regard unless they are not distributed but used for the purpose of the services concerned.

14. Thus, Article 11(1)(f) of the 1968 Law appears to transpose the cultural exemption in Article 13(A)(1)(n) of the Sixth Directive, subject to the non-profit-making and anti-distortion conditions set out in the first and fourth indents of Article 13(A)(2)(a); the implementing decree extends that

exemption to bodies providing sports facilities, which might otherwise have fallen under the sports exemption in Article 13(A)(1)(m) of the directive. The combined provisions of Article 11(1)(e) and (2) of the 1968 Law, however, appear to transpose that sports exemption, subject again to the non-profit-making condition, but with the proviso that operating surpluses will be regarded as profits unless they are ploughed back into the sports services supplied and subject to the further limitation that only services supplied to the members of the organisations concerned will be exempted.

The proceedings

15. According to the order for reference, Kennemer Golf & Country Club (Kennemer) is an association whose object is the pursuit and promotion of sport and games, in particular golf. It owns a golf complex and club house in Zandvoort, near Amsterdam. Members pay an annual membership fee as well as admission fees for use of the course, and must also participate in an interest-free debenture loan. Kennemer derives other income from related sources such as letting certain immovable property, sponsorship, interest on investments, the supply of balls and certain rental services and daily green fees paid by non-members who use the golfing facilities.

16. During each of the years 1990 to 1995, Kennemer made an operating surplus which was paid into its reserve funds. One of those funds in particular was earmarked for expenditure other than recurring annual expenditure.

17. In the belief that its services to non-members were exempt from VAT, Kennemer did not pay any tax on them. The tax authorities however considered that the exemptions under Netherlands law did not apply because Kennemer aimed to make a profit, and imposed an additional assessment for the 1994 tax year. Kennemer challenged that assessment, but it was upheld by the Gerechtshof te Amsterdam (Amsterdam Regional Court of Appeal). The Gerechtshof held that there were reasonable grounds for assuming that the appellant systematically sought to achieve operating surpluses. The fact that Kennemer used those surpluses for the golf facilities it provided did not justify the conclusion that it did not aim to make a profit; that would have been possible only if there had been an incidental and not a systematic intention to make operating surpluses to be used in that way.

18. Kennemer then appealed to the Hoge Raad, which has stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

1.(a) Where it is necessary to establish whether or not a body aims to make a profit as referred to in Article 13(A)(1)(m) of the Sixth Directive, must account be taken solely of earnings from the services referred to in that provision or must earnings from other services provided by it also be taken into consideration?

(b) If, in determining whether or not the aim is to make a profit, account must be taken solely of the services supplied by the body as referred to in Article 13(A)(1)(m) of the Sixth Directive and not total earnings, must only the costs incurred directly for the services be taken into consideration or also a proportion of the body's other costs?

2.(a) Is there a direct link, within the meaning of inter alia the judgment of the Court of Justice of the European Communities in Case 102/86 Apple and Pear Development Council [1988] ECR 1443, in the case of subscription fees charged by an association which, pursuant to the object laid down in its articles of association, provides its members with sports facilities in the context of an association and, if not, is the association to be regarded as a taxable person within the meaning of Article 4(1) of the Sixth Directive only in so far as it also provides benefits for which it receives direct consideration?

(b) Must the total amount of the annual subscription fees from the members whom the association provides with sports facilities be included in the earnings of a body in the form of an association

which are to be taken into account in determining whether or not the aim is to make a profit as described in the first question even where no direct link exists between the various services provided by the association for its members and the subscription fee paid by them?

3. Does the fact that a body uses surpluses which it systematically aims to make for the purpose of its benefits in the form of a facility to play a type of sport as provided for in Article 13(A)(1)(m) of the Sixth Directive justify the conclusion that it does not aim to make a profit within the meaning of that provision, or is such a conclusion possible only where the intention is incidentally and not systematically to make operating surpluses which are used as described? In answering these questions must account also be taken of the first indent of Article 13(A)(2) of the Sixth Directive and, if so, how is that provision to be interpreted? In particular, in the second part of the provision must "systematically" be read between "arising" and "shall", or "merely incidentally"?

19. Written observations have been submitted to the Court by the Finnish, Netherlands and United Kingdom Governments and by the Commission. The Finnish Government's observations however are confined to the third question, and only the United Kingdom Government and the Commission made oral submissions at the hearing.

Analysis

The first question

20. The first question is essentially whether, for the purposes of Article 13(A)(1)(m), non-profit-making status is to be determined by reference to all the activities of the organisation or only to those which might benefit from the exemption.

21. The Netherlands Government - agreeing with the opinion of Advocate General Van den Berge delivered to the Hoge Raad in the present case, which appears to be in line with the approach taken hitherto by the Netherlands courts - submits that the question must be determined with regard solely to the services to be exempted, since it is with them that the provision is concerned.

22. I disagree. As the Commission has pointed out, all the language versions of Article 13(A)(1)(m) clearly attach the qualification non-profit-making to organisation and the legislature would no doubt have chosen different wording had it had any different intent.

23. Moreover, as the United Kingdom Government has noted, the provision contains three distinct and cumulative conditions, relating to the nature of the organisation (non-profit-making), the nature of the services (closely linked to sport) and the identity of the recipients (persons taking part in sport). If the exemption were to apply only to non-profit-making services, commercial sports undertakings could seek exemption for certain services they supply, a situation which could not be reconciled with the plain terms of the provision and which would inevitably - given the opportunities for shrewd cross-subsidising which would arise - lead to a distortion of competition.

24. It is true that, as the Netherlands Government says, some services provided at a profit by non-profit-making organisations may be in competition with services provided by commercially-run organisations, and a discrepancy could arise if the same services were thus subject to tax in some cases and not in others. However, distortion of competition between commercial and non-profit-making organisations can be prevented under the fourth indent of Article 13(A)(2)(a) (cited above) or the second indent of Article 13(A)(2)(b) (which precludes the exemption for supplies whose basic purpose is to obtain income through transactions which are in direct competition with those of commercial enterprises liable for VAT).

25. Thus, in my view, the answer to the first part of the Hoge Raad's first question must be that when determining whether an organisation is non-profit-making for the purposes of Article 13(A)(1)(m) of the Sixth Directive, account must be taken of its activities as a whole. The second

part of that question need not be answered.

26. That, of course, leaves open the question of precisely what is meant by non-profit-making. Although the United Kingdom has suggested an answer in the context of the first question, I prefer to consider that issue when examining the third question.

The second question

27. This question is essentially whether annual membership fees paid to a golf club constitute consideration within the meaning of Article 2 of the Sixth Directive for the services provided by the club to its members, or whether those fees, if they do not constitute consideration, are to be taken into account when deciding whether the club aims to make a profit.

28. It is raised in the light of the Court's case-law as set out in, in particular, Apple and Pear Development Council, in which the Court held that a supply of services for consideration (thus a taxable supply) presupposes the existence of a direct link between the service provided and the consideration received. There was no such link in the case of a statutory body promoting the interests of a whole industry and financed by a compulsory levy.

29. I should point out, however, that the answer to this question may be of limited relevance to the resolution of the dispute before the national court unless it is held - contrary to my view - that the non-profit-making criterion in Article 13(A)(1)(m) of the Sixth Directive falls to be assessed separately for each of the organisation's activities.

30. Be that as it may, my view is that a direct link normally exists between the annual membership fee and the services provided to members.

31. The Netherlands Government considers that there is no relationship between the fee and the use made of the facilities by the members - the obligation to pay the fee remains whether the member uses the club every day or not at all during the year - and thus no taxable service. That however does not appear to be the correct analysis. As both the United Kingdom and the Commission have pointed out, the service provided in exchange for the fee is not the use made, but the opportunity to make use, of the facilities.

32. The fact that the link is more immediate where daily green fees are concerned does not make it any less direct in the case of annual membership fees. The club exists to provide certain facilities and it does so in exchange for either daily green fees (paid by non-members) or a combination of annual membership and admission fees (paid by members). The benefits provided may differ in the two cases, but they are directly linked to the payments in both. The fact that in one case payment may be made for actual use and in the other for entitlement to use does not change that.

33. The above view assumes that the annual membership fee is indeed paid at least in part in consideration for the opportunity to use the sports facilities. It is possible to imagine that a golf club may have a category of membership which offers access only to its non-sporting facilities. In that case, the direct link would be to the making available of those facilities. However, as I have indicated, such a distinction may be of limited relevance in the present context if an organisation's non-profit-making status is to be assessed in the light of its activities as a whole.

34. The Netherlands Government's approach, on the other hand, would appear to make it possible for practically any service provider to escape VAT by judicious use of all-inclusive charges - with potentially far-reaching results for the VAT system.

35. In my view, therefore, the answer to the Hoge Raad's second question is that annual membership fees paid to a golf club constitute consideration within the meaning of Article 2 of the Sixth Directive for the services provided by the club to its members. The remainder of that

question need not be answered.

The third question

36. This appears to be the central question in the case: if an organisation is to be classed as non-profit-making for the purposes of Article 13(A)(1)(m) of the Sixth Directive, to what extent may it none the less make a surplus and what is the relevance in that regard of the first indent of Article 13(A)(2)(a) (see paragraphs 5 and 8 above)? It is most helpful to begin by examining the relationship between the two provisions.

- The relationship between Article 13(A)(1)(m) and the first indent of Article 13(A)(2)(a)

37. I take the view that the two provisions must in principle be interpreted and applied separately, despite the undeniable degree of overlap between them in terms of substance.

38. First, whilst Article 13(A) of the Sixth Directive may not be a model of legislative perfection, its structure is none the less unambiguous. Article 13(A)(1) lists 16 types of supplies which are to be exempted, in subparagraphs (a) to (q). Within that list, subparagraphs (b), (g), (h), (i), (l), (m) and (n) are all grouped together for the purpose of applying additional conditions, to be found in Article 13(A)(2)(a) and (b). The former contains four optional conditions which may be imposed by Member States on the granting of an exemption for an activity within the group and the latter lays down a compulsory limitation on such exemptions (and Article 13(A)(1)(o) provides a further related exemption, subject again to certain conditions).

39. That structure militates against using the terms of an optional condition in Article 13(A)(2)(a) to define those of a compulsory exemption in Article 13(A)(1)(b), (g), (h), (i), (l), (m) or (n). To do so would be to negate the optional nature of the condition.

40. Second, I do not consider that when interpreting Article 13(A)(1)(m) regard should be had to the Commission's original proposal for a Sixth Directive, in which the term non-profit-making organisation was defined in terms foreshadowing those of the first indent of Article 13(A)(2)(a), precisely because that definition was not included in the directive as adopted.

41. However, that is not to say that no light whatever can be shed by one provision on the interpretation of the other.

42. On the one hand, if the provisions of the article are to be interpreted coherently, there must be no contradiction or inconsistency between them. At least at first sight it may therefore be thought that the concept of a non-profit-making organisation in Article 13(A)(1)(m) should be one on which it is possible to impose the conditions of not systematically aiming to make a profit and not distributing any profits nevertheless arising but assigning them to the continuance or improvement of the services supplied, contained in the first indent of Article 13(A)(2)(a); at least cumulatively, those conditions should in principle entail some restriction of that concept.

43. On the other hand it cannot be assumed that each part of the first indent of Article 13(A)(2)(a) must impose a significant limitation on every type of body capable of qualifying for each of the different exemptions concerned. For the sake of convenience, it would appear, the Community legislature has set out a number of conditions as a group capable of being applied to a group of exemptions, rather than stipulating specific conditions individually and repeatedly for each exemption. Thus it may be expected that some indents or parts of indents will be of greater significance in the context of some exemptions than in that of others; it is therefore also possible that there is some overlap or replication between one of the conditions listed in Article 13(A)(2)(a) and an exemption to which it applies.

- The concept of a non-profit-making organisation in Article 13(A)(1)(m)

44. The Commission points out that the concept of a non-profit-making entity already exists in the laws of several Member States. For the purposes of the Sixth Directive, however, an autonomous and uniform Community definition is required, which will not necessarily correspond to those concepts in every detail.

45. First, I agree with what appears to be the consensus of the Finnish and United Kingdom Governments and the Commission, that the idea of profit-making in this context relates to the enrichment of natural or legal persons - in particular those having a financial interest in the organisation in question - rather than to whether in any given period the organisation's income exceeds its expenditure. The concept of a non-profit-making organisation contrasts essentially with that of a commercial undertaking run for the profit of those who control and/or have a financial interest in it.

46. Second, in accordance with most of the language versions, the focus must be on the aims of the organisation concerned rather than on its results - the mere fact that an entity does not make a profit over any given period is not enough to confer non-profit-making status. Moreover, from the fact that non-profit-making is used to qualify organisation, it would seem that the aims in question are those which are inherent in the organisation rather than those which it may be pursuing at a particular point in time.

47. When assessing those aims, therefore, it is necessary but not sufficient to look at the organisation's express objects as set out in its statutes. It is also necessary however to examine whether the aim of making and distributing profit can be deduced from the way in which it operates in practice. And in that context it is not enough to look simply for an overt distribution of profits in the form of, say, a direct return on the investment represented by contributions to the organisation's assets. Such distribution might also, at least in some circumstances, take the form of unusually high remuneration for employees, redeemable rights to increasingly valuable assets, the award of supply contracts to members, whether or not at prices higher than the market rate, or the organisation of sporting competitions in which all the members won prizes. No doubt further methods of covert distribution can be devised.

48. On the other hand, as the Finnish and United Kingdom Governments have also submitted, it would not be reasonable to define an organisation as profit-making simply because it sought to achieve a surplus of regular income over regular expenditure in order to budget for irregular but foreseeable expenditure. A golf club might need, for example, to re-roof its clubhouse after a number of years or to extend its course. To deny it non-profit-making status simply because it accumulated a surplus for that purpose would be to discourage it from managing its affairs economically, with prudence and foresight, and to ignore the fact that no material benefit will accrue to any person as a result of the surplus. Organisations would moreover be liable to acquire and lose their right to exemption depending on where they stood in their budgeting programme, although their fundamental nature and aims would remain unchanged. That cannot in my view have been the intention of the legislature when it enacted the category of non-profit-making organisations.

49. Clearly, in each case the assessment must be a matter for the national court, which is in a position to investigate the circumstances of the organisation. In the present case, it does not seem possible for this Court to give more than general guidance, since it is not clear from the case-file exactly how the excess income paid by Kennemer into its reserve funds was actually used or intended to be used.

50. The relevant part of the Hoge Raad's question may none the less be answered to the effect that a non-profit-making organisation within the meaning of Article 13(A)(1)(m) of the Sixth

Directive is one which does not have as its object the enrichment of natural or legal persons and which is not in fact run in such a way as to achieve or seek to achieve such enrichment; however, the fact that a body systematically aims to make a surplus which it uses for the services it supplies in the form of a facility to practise a sport does not preclude its classification as such a non-profit-making organisation.

51. In answering that specific question, it is not appropriate, as I have indicated above, to have regard to the terms of the first indent of Article 13(A)(2)(a). However, it appears that the Netherlands legislature has sought also to apply the conditions set out in that indent to the exemption under Article 13(A)(1)(m). In so far as it has done so, those conditions must be examined in order to provide a more complete answer to the national court.

- The first indent of Article 13(A)(2)(a)

52. This provision sets out three conditions: (i) there may be no systematic aim of making a profit; (ii) any profits nevertheless arising may not be distributed; (iii) such profits must be used for the continuance or improvement of the services supplied. It seems to me clear from the language used that those conditions are cumulative and not alternative.

53. They must moreover be construed in such a way as to be coherent both among themselves and with the terms of the exemptions to which they may be applied. Therefore, taken together, they should be capable of allowing some non-profit-making organisations within the meaning of Article 13(A)(1)(m) to benefit from the exemption whilst excluding others; put another way, it should be possible for some but not all of those organisations to fulfil the conditions.

54. It is inherent in the concept of a non-profit-making organisation as I have defined it that the second condition in the first indent - prohibition of the distribution of profits - will be fulfilled. Moreover, the word profit must be construed here as surplus of income over expenditure rather than enrichment of natural or legal persons (that is to say profit which by its very nature is distributed) or the condition would be circular and would have no meaning.

55. It must consequently bear the same construction in the third condition - use for the furtherance of the services supplied - which will often, but not necessarily, be fulfilled: a non-profit-making organisation may make a surplus which it uses otherwise than for the continuance or improvement of its services whilst none the less ensuring that third parties are not enriched.

56. I should point out here that I do not agree with the suggestion in the Hoge Raad's question that the second and third conditions might be read as referring to any profits nevertheless systematically arising. The word systematically in this context implies the existence of a system and thus, where human activities are concerned, of an organised plan or design. It is not possible in my view for profits to arise systematically in the absence of a systematic aim to make them. However, that does not mean that the words merely incidentally must necessarily be read into the provision either. The reference is simply to a surplus, of whatever nature or origin, to be used in a specified manner.

57. What remains to be determined is whether the first of the three conditions in the indent - that there may be no systematic aim to make a profit - limits or merely replicates the concept of non-profit-making aim set out in Article 13(A)(1)(m) and, if it limits that concept, in what way it does so.

58. The fact that the two provisions are worded differently in all the language versions might well suggest that their meaning was intended to be different. That view would be supported by the fact that the alternative would offer less scope for the Member States to use the indent to impose any further condition on non-profit-making bodies; they would be empowered merely to insist that such bodies use any surplus for the furtherance of the services they supply.

59. On the other hand, the reasoning I have set out in paragraph 48 above applies as much in the context of the first indent of Article 13(A)(2)(a) as in the context of Article 13(A)(1)(m). It would seem arbitrary in the extreme to allow an organisation to benefit from a VAT exemption while budgeting regularly for its regular expenditure but not if it accumulates a temporary surplus to budget for irregular but foreseeable expenditure.

60. In line with that reasoning, I take the view that the first part of the optional condition in the first indent of Article 13(A)(2)(a) of the Sixth Directive, to the effect that the bodies in question may not systematically aim to make a profit, refers to the making of profit intended to be distributed and thus essentially replicates the non-profit-making criterion in Article 13(A)(1)(m), whereas the second and third parts of that condition refer respectively to prohibited and compulsory uses of any surplus of income over expenditure.

61. That interpretation does not deprive the condition of any substance. The overlap with the non-profit-making criterion in Article 13(A)(1)(m) does not necessarily apply in the case of the bodies referred to in the other subparagraphs concerned, such as hospitals or similar recognised establishments, or charitable, educational or cultural bodies recognised by the Member States. Medical or educational establishments in particular might well include among their aims the making and distribution of profit whilst still complying with all the other criteria in the relevant subparagraphs. Furthermore, a requirement that surpluses must be assigned to the continuance or improvement of the services supplied will significantly circumscribe the uses to which such monies may be put; for example, a golf club might be required to devote all its income to its own services rather than, say, to making donations to an external fund for promoting excellence in golf journalism.

Further remarks

62. It appears from the order for reference that the case arises out of a dispute as to whether Kennemer is liable to VAT on the services it provides to non-members, and that the question has been approached essentially on the basis of the profit-making or non-profit-making status of the club. It is on that basis that the Hoge Raad has referred three questions, it is on that basis that I have examined them and it is on that basis that this Court should provide an answer.

63. However, as I have remarked in paragraphs 13 and 14 above, Article 11(1)(e) of the 1968 Netherlands Law on Turnover Tax, in what appears to be the principal transposition of Article 13(A)(1)(m) of the Sixth Directive, seems to limit the exemption to services supplied to their members by organisations whose aim is the pursuit or promotion of sport. If that limitation were consistent with the Sixth Directive, it might be unnecessary, in the specific circumstances of the case in the main proceedings, to look any further.

64. The limitation may be thought to be consistent with Article 13(A)(1)(m) which, it will be recalled, allows Member States to exempt certain services closely linked to sport. On its wording, that would appear to allow the exemption to be limited to services provided by sports clubs to their members. In its First Report on the Sixth Directive the Commission stated: There is ... no doubt that ... the Council considered that the Member States should grant only limited exemptions ..., for otherwise there would have been no reason to use the adjective "certain". However, in his Opinion in Commission v Spain, Advocate General La Pergola considered that the term certain was an unfortunate formulation but was merely intended to limit the exemption to services provided by non-

profit-making organisations. Since, moreover, the point has not been raised or discussed before the Court in the present case, it would in my view be inappropriate to express a definitive view here.

65. Another point which falls outside the scope of the Hoge Raad's questions and on which no submissions have been made to the Court is whether it is consistent with the Sixth Directive for the Netherlands Turnover Tax Law to include supplies made by bodies providing sports facilities within the exemption for supplies of a social or cultural nature (see paragraphs 11, 12 and 14 above) as well as within the specific sports exemption. It might appear that two separate exemptions are being confused. However, the Court does not have sufficient information on the operation of the Netherlands legislation to express a definite view on that point.

Conclusion

66. I am therefore of the opinion that the Court should answer the Hoge Raad's questions as follows:

(1) When determining whether an organisation is non-profit-making for the purposes of Article 13(A)(1)(m) of the Sixth VAT Directive, account must be taken of its activities as a whole.

(2) Annual membership fees paid to a golf club constitute consideration, within the meaning of Article 2 of the Sixth Directive, for the services provided by the club to its members.

(3) A non-profit-making organisation within the meaning of Article 13(A)(1)(m) of the Sixth Directive is one which does not have as its object the enrichment of natural or legal persons and which is not in fact run in such a way as to achieve or seek to achieve such enrichment; however, the fact that a body systematically aims to make a surplus which it uses for the services it supplies in the form of a facility to practise a sport does not preclude its classification as such a non-profit-making organisation. The first part of the optional condition in the first indent of Article 13(A)(2)(a) of the Sixth Directive, to the effect that the bodies in question may not systematically aim to make a profit, falls to be construed in the same way.