Conclusions
OPINION OF ADVOCATE GENERAL
JACOBS
delivered on 23 October 2003(1)

Case C-90/02

Finanzamt Gummersbach
v
Gerhard Bockemühl

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1. In this case the German Bundesfinanzhof (Federal Finance Court), seeks guidance on the interpretation of the Sixth VAT Directive ('the Directive' or 'the Sixth Directive'). (2) First, it asks whether the recipient of a service who is also liable to pay the relevant VAT may deduct that tax only if he is in possession of an invoice issued in accordance with the Directive. If so, it further wishes to know what details the invoice must contain, in particular whether the amount of tax and the name and address of the supplier must be specified, and whether an incorrect definition of the taxable service constitutes a defect. Finally, it enquires, what legal consequences ensue if it is impossible to establish that the person who issued the invoice was the person who supplied the service?

Background and legislation

The Community VAT system

2. The essence of the VAT system is set out in Article 2 of the First VAT Directive: (3)
'The principle of the common system of value added tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged.
On each transaction, value added tax, calculated on the price of the goods or services at the rate applicable to such goods and services, shall be chargeable after deduction of the amount of value added tax borne directly by the various cost components.'

3. That system thus envisages a chain of transactions in which the net amount payable in respect of each link is a specified proportion of the value added at that stage. When the chain comes to an end at the final stage of private consumption, the total amount levied will have been the relevant proportion of the final price.

4. The Sixth Directive regulates the system in greater detail, although some matters are left to the Member States. Under Article 2, a supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such is subject to VAT, although certain transactions, not in issue here, are exempted under other provisions. A taxable person is defined in Article 4(1) as one who carries out an economic activity, whatever its purpose or result. Under

Articles 5 to 7, taxable transactions are supplies of goods, supplies of services or imports.

5. The essentials of the right to deduct are set out in Article 17 of the Sixth Directive. A taxable person may deduct from the VAT which he is liable to pay any input tax on supplies made to him by another taxable person, in so far as those supplies are used for the purposes of his own taxable transactions. That entitlement arises whenever the deductible tax becomes chargeable. In accordance with Article 21, the person liable to pay the tax on a transaction is in general the supplier, although it may in some circumstances – including those in issue in the present case – be the recipient of the supply. (4)

6. Clearly in such a system there is a need for documentary evidence of liability for, payment of and entitlement to deduct tax. Such matters are dealt with in particular in Articles 18 and 22.

7. A further important consideration is the fact that VAT, although to a large extent harmonised by Community rules and an important element in the Community's own resources, remains from a national point of view a national tax and is subject to varying rates in different Member States. Where cross-border transactions within the Community are concerned, there must therefore be rules to determine the place where the supply occurs. As regards most services, in particular those of the kind in issue in the present case, those rules appear in Article 9 of the Directive although, as will be seen, their relevance here is confined essentially to the fact that they may indirectly determine who is liable to pay the tax.

The relevant Community provisions in detail

8. The main provisions of Community law at issue are Articles 9, 17, 18, 21 and 22 of the Sixth Directive. The version applicable to the facts in the main proceedings is that in force in 1995. It is therefore necessary to consider the text as amended by, in particular, Council Directive 91/680/EEC (5) and Council Directive 92/111/EEC. (6) In the case of Articles 17(2), 18(1), 21(1) and 22(3), the relevant text in fact appears – confusingly enough – in Articles 28f, 28g and 28h, which form part of Title XVIa concerning the 'Transitional arrangements for the taxation of trade between Member States'.

Place where a service is supplied

9. In Title VI of the Directive relating to the place of taxable transactions, Article 9 concerns the supply of services. Under Article 9(1) a service is normally deemed to be supplied at the place of the supplier's business, establishment, address or residence, as the case may be. Under Article 9(2), however:

'(a)the place of the supply of services connected with immovable property … shall be the place where the property is situated;

…

(e)the place where the following services are supplied when performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides:

…

–the supply of staff,

…'

Persons liable to pay tax to the authorities

10. According to Article 21:

'The following shall be liable to pay value added tax:

1.under the internal system:

(a)the taxable person carrying out the taxable supply of goods or of services, other than one of the supplies of services referred to in (b).

Where the taxable supply of goods or of services is effected by a taxable person established abroad, Member States may adopt arrangements whereby tax is payable by another person. *Inter alios* a tax representative or the person for whom the taxable supply of goods or of services is

carried out may be designated as that other person.
…
(b)persons to whom services covered by Article 9(2)(e) are supplied …; however, Member States may require that the supplier of the service shall be held jointly and severally liable for payment of the tax;
(c)any person who mentions the value added tax on an invoice or other document serving as invoice;
…'

Invoices
11. Dealing with the obligations of persons liable for payment of the tax, Article 22(3) provides, *inter alia*:
'(a)Every taxable person shall issue an invoice, or other document serving as invoice, in respect of goods and services which he has supplied or rendered to another taxable person or to a non-taxable legal person. … A taxable person shall keep a copy of every document issued.
…

(b)The invoice shall state clearly the price exclusive of tax and the relevant tax at each rate as well as any exemptions.
… [(7)]

(c)Member States shall lay down the criteria that shall determine whether a document may be considered an invoice.'
12. It may be mentioned that, since the material time in the present case, Directive 2001/115/EC (8) has amended Article 22(3)(b) to include an extended and exhaustive list of particulars to be included in an invoice, and has deleted Article 22(3)(c). The new provision spells out that:
'without prejudice to the specific arrangements laid down by this Directive, only the following details are required for VAT purposes on invoices issued under the first, second and third subparagraphs of point (a)'.
13. Among the various particulars the list includes:
'the VAT identification number … under which the taxable person supplied the goods or services',
'the full name and address of the taxable person and of his customer',
'the extent and nature of the services rendered',
'the VAT amount payable, except where a specific arrangement is applied for which this Directive excludes such a detail' and
'where an exemption is involved or where the customer is liable to pay the tax, reference to appropriate provision of this directive, to the corresponding national provision, or to any indication that the supply is exempt or subject to the reverse-charge procedure'.
14. Article 22(8) of the Sixth Directive provides:
'Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.'
15. Since the material time, Directive 2001/115 has added a second subparagraph to Article 22(8): 'The option provided for in the first subparagraph cannot be used to impose additional obligations over and above those laid down in paragraph 3'.
Right to deduct
16. Article 17, on the 'origin and scope of the right to deduct', provides:
'1.The right to deduct shall arise at the time when the deductible tax becomes chargeable.
2.In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a)value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person liable for the tax within the territory of the country; (9)
17. …'
18. Article 18(1) of the Directive, setting out the rules governing the exercise of the right to deduct, provides:
'To exercise his right of deduction, a taxable person must:
(a)in respect of deductions pursuant to Article 17(2)(a), hold an invoice drawn up in accordance with Article 22(3);
…
(d)when he is required to pay the tax as a customer or purchaser where Article 21(1) applies, comply with the formalities laid down by each Member State;
…'
Relevant national legislation
19. Germany has exercised the option open to it under the second subparagraph of Article 21(1)(a) of the Sixth Directive. Under Paragraph 18 of the Umsatzsteuergesetz (VAT Law) 1993, as it applied in 1995, the federal finance minister could decide, in order to ensure the collection of the tax, that the person to whom goods or services were supplied by a person established abroad was liable to pay the value added tax on that transaction. The implementing decision could lay down certain other conditions, relating in particular to the method of calculation and payment of the tax.
20. A withholding system was thus provided for in Paragraph 51 et seq. of the Umsatzsteuer-Durchführungsverordnung (VAT implementing regulation, 'the UStDV') 1993.
21. Under Paragraph 51 of the UStDV, the recipient of work and other services supplied by an undertaking established abroad was to withhold the relevant VAT and pay it to the competent tax office, even in the event of unresolved doubt as to whether the supplier was indeed established abroad.
22. Paragraph 52 provided for certain exceptions to those obligations. Paragraph 52(2) embodied the so-called 'Nullregelung', a system under which the recipient was not obliged to withhold and pay the tax when the supplier established abroad had not issued an invoice showing the tax separately and when the recipient could have claimed a full deduction of the VAT if it had been shown separately. In such cases, it would appear, the recipient was merely to pay full output tax instead of advancing the input tax on those supplies and subsequently deducting it.
23. However, following objections from the Commission that it was not fully in accordance with Community law, that withholding system was abolished with effect from 1 January 2002.
The main proceedings and the questions referred
24. Mr Gerhard Bockemühl runs a construction firm in Germany operating in particular in the superstructure, bridge building and tunnelling sectors. In 1995, some work was done for the firm by workers from Jaylink Bau Ltd Building Contractors. That company had a contact address in the Netherlands. The referring court notes that an 'offshore' company with the name of Jaylink Building Contractors is registered in England with its registered office at an accountants' firm in Mayfair, London.
25. The services supplied were invoiced by Jaylink Bau Ltd Building Contractors. The invoices showed an English VAT registration number and the references of a German bank account. No VAT amount was, however, indicated. The invoices merely stated: 'Nullregelung, Paragraph 52 UStDV, as agreed'. Initially, the Mayfair address mentioned above was given, while later invoices indicated a different address in London.
26. Following an audit, the Finanzamt (Tax Office) Gummersbach issued Mr Bockemühl with a tax assessment notice for the VAT on the services supplied to him. The tax office observed that the invoices did not show the tax amount. Nor was the name and address of the undertaking issuing the invoice correct, so that it was impossible to determine that the undertaking issuing the invoice was the same as had supplied the services. In the tax office's view, those services had been supplied by a third, unknown undertaking, established outside Germany. Moreover, the

services supplied were not defined correctly (referring not to the supply of staff but to the work done). Consequently it concluded that, as recipient of the services, Mr Bockemühl was liable to pay VAT of DEM 17 219.17 on those taxable transactions.

27. Following an unsuccessful objection, Mr Bockemühl brought an action before the competent Finanzgericht (Finance Court), which found in his favour. That court had no 'reasonable doubt that the person issuing the invoice and the undertaking supplying the service were one and the same person'. The tax office seeks a review of that decision before the Bundesfinanzhof, the referring court.

28. The tax office submits that, in case of doubt, Mr Bockemühl should have withheld the tax on the services supplied to him. Moreover, even if the invoice had shown the tax separately, he would not have been entitled to deduct it because the person who invoiced – or indeed who supplied – those services was not clearly identifiable. Consequently, Paragraph 52(2) of the UStDV was not applicable. The applicant was thus liable to the tax as recipient of the services.

29. The Bundesfinanzhof observes that, according to its case-law, even under the Paragraph 52(2) procedure there must be an invoice. Further that invoice must be issued by the person supplying the service and the service should be so defined that the taxable transaction can be accurately determined and easily verified.

30. The Bundesfinanzhof has however doubts about the interpretation of the requirements of the Directive with respect to invoicing in a case such as the one at issue. It has therefore stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'1.Is it necessary under Article 18(1)(a) of Directive 77/388/EEC for a person to whom services are supplied, who is the person liable to pay the tax under Article 21(1) of Directive 77/388/EEC and to whom the tax has been charged in that capacity, to be in possession of an invoice issued in accordance with Article 22(3) of Directive 77/388/EEC in order to exercise his right to deduct input tax?

2.If so, what details must the invoice contain? Is it detrimental if, instead of the supply of staff, the work carried out using that staff is given as the service supplied?

3.What are the consequences in law of unresolvable doubts that the person issuing the invoice supplied the service invoiced?'

31. Written observations have been submitted by the German Government and the Commission. The Finanzamt, Mr Bockemühl, the German Government and the Commission have also replied in writing to a question put by the Court on whether Member States are empowered under Articles 18(1)(d) and 22(3)(c) of the Directive to introduce exceptions to the requirements of Articles 18(1)(a) and 22(3)(b) of the Directive. The Finanzamt, Mr Bockemühl and the Commission presented oral argument at the hearing.

Assessment

Preliminary observations

32. First, Paragraph 51 et seq. of the UStDV appear to have been intended to implement provisions of the Directive.

33. The Bundesfinanzhof recognises however that those national provisions were not fully consistent with Community law and that is why they have been repealed. The referring court is none the less of the view that the rule of liability of the service recipient and the 'Nullregelung' system in Paragraph 52(2) of the UStDV are applicable to the facts in the main proceedings to the extent that the person to whom the services are supplied is liable to pay the tax as provided in Article 21 of the Directive, and may take advantage of the right of deduction as provided in the same Directive.

34. It must be stressed that the questions in this case concern the interpretation of the Directive, and not whether Paragraph 51 et seq. of the UStDV are compatible with it.

35. It is well established however that, in an area governed by a directive, national courts must interpret national law, whether adopted before or after that directive, as far as possible in the light of its wording and purpose in order to achieve the result aimed for by it. (10) It will therefore be for the referring court to determine to what extent the national provisions at issue can be construed

consistently with the Directive and hence be applicable in the instant case.

36. Second, before examining the questions themselves, it is helpful to have in mind a schematic view of the way in which the Directive provisions set out above interact in their application to the circumstances in issue.

37. In that context, there seems to be some uncertainty whether the services supplied were construction services or the supply of staff. However, it appears from the order for reference that the uncertainty may be ignored, at least for the purposes of the first and third questions and part of the second question. Thus, if construction services are involved, the place of supply is that of the immovable property concerned under Article 9(2)(a); if the supply of staff, the place of supply is that of the customer's establishment under Article 9(2)(e). The country is Germany in both cases. If Article 9(2)(e) applies, the customer is liable to pay the VAT under Article 21(1)(b); if the supply falls within Article 9(2)(a) it is open to the Member States to make the customer liable under Article 21(1)(a). It may be inferred from the order for reference that Germany has opted for that solution, so that in either case Mr Bockemühl is the person liable to pay the tax.

38. Mr Bockemühl also wishes to deduct the tax, and relies on Article 17(2)(a) in that regard. In several language versions of the Directive as it applied at the material time, the right to deduct under Article 17(2)(a) would seem to be confined to cases where the supplier was liable for the tax within the territory of the country in which the deduction was claimed. (11) However, that clearly appears to have been a drafting error, rectified by Directive 95/7 in line with the original German version which referred simply to tax due or paid within the territory of the country. Moreover, even before that correction, the inconsistency between the various languages does not seem to have been considered an obstacle to the exercise of the right of deduction in cases where the supplier was in a different Member State from the customer liable to pay the tax. (12) I thus accept the view – which has not been challenged in the course of the proceedings – that Article 17(2)(a) is the correct basis for deduction in such circumstances.

39. In order for the customer to exercise his right of deduction under Article 17(2)(a), Article 18(1)(a) requires him to hold an invoice drawn up in accordance with Article 22(3), that is to say issued by the supplier in compliance with certain specifications. Where the customer himself is liable for the tax pursuant to Article 21(1), Article 18(1)(d) requires him to comply with the formalities laid down by the Member State in order to exercise the right of deduction.

40. In summary, Article 9(2) determines the place of supply (here, Germany) and, on that basis, Article 21(1) determines the person liable to pay the tax (here, the customer). Article 17(2) determines the customer's right to deduct, and Article 18(1) lays down rules governing the exercise of that right. Those rules refer to possession of an invoice in accordance with Article 22(3) and, in cases such as the present, to compliance with formalities laid down by Member States.

41. Third, it must be remembered that, when a taxable person has paid VAT (input tax) on goods or services acquired for the purposes of taxable supplies to be made by him, the VAT system requires that, in the absence of any express provision to the contrary, he must be able to deduct that amount from any VAT (output tax) for which he must account to the tax authorities in respect of the supplies which he makes, provided that he can establish payment of the input tax and has complied with whatever formalities are legitimately imposed.

First question

42. By its first question, the Bundesfinanzhof asks whether a recipient of services who is liable to pay the VAT on those services in accordance with Article 21(1) of the Directive, and has been charged with its payment, may exercise his right of deduction under Article 18(1)(a) only if he is in possession of an invoice issued in accordance with Article 22(3).

43. In my view that is indeed so.

44. Under Article 17(2)(a) of the Directive, a taxable person is entitled to deduct from the tax that he is liable to pay the VAT paid in respect of supplies made to him by another taxable person, provided that those supplies are used for the purposes of his taxable transactions. Article 18(1)(a) expressly and clearly provides: 'to exercise his right of deduction, a taxable person must … in respect of deductions pursuant to Article 17(2)(a) … hold an invoice drawn up in accordance with

Article 22(3)'. Such language leaves little room for doubt.

45. Indeed, the referring court accepts that the wording is quite clear. It suggests however that, where the person liable to pay the tax is the recipient of the supply, the invoice does not have the same significance as it has when the person liable is the supplier.

46. I disagree. Whilst it is important, when interpreting the terms of the Directive, to bear in mind the purpose for which they were enacted and their place in the overall system of VAT, that approach does not in my view lead on the present issue to any different result from that indicated by the plain wording of Article 18(1)(a).

47. If VAT is to be deducted, there must be proof that it has been incurred. In the context of the Community VAT system, an invoice is an important – and probably the clearest – means of providing that proof. It is the 'ticket of admission' to the right to deduct. (13) For that reason any taxable person who is entitled to deduct input VAT must be meticulous in obtaining and keeping the necessary documentation, so as to avert the possibility that a claim may be rejected as unsubstantiated. The proper issuing and keeping of invoices is also of crucial importance for the checks carried out by the relevant tax administration to ensure compliance with the relevant VAT rules.

48. The fact that, in the case at issue, the person entitled to deduct the input VAT is also the person liable to pay it to the relevant authority does not change that analysis. The same considerations remain valid. Moreover, as the German Government observes, liability to pay VAT and entitlement to deduct input tax are separate issues governed by separate rules. If in certain cases the person liable to pay the tax is the recipient and not the supplier, that does not affect the need to hold an invoice in order to exercise the right to deduction.

49. That approach is consistent with other provisions of the Directive. Under Article 21(1)(a), where goods are supplied by a person established in another Member State, the tax is due by the recipient provided that, *inter alia*, there is an 'invoice issued by the taxable person not established within the territory of the country' that 'conforms to Article 22(3)'. And, according to Article 22(3)(a), an invoice is required also in the case of supply of goods that are exempted under Article 28c(A). In my view, it may safely be considered that the requirement in Article 22(3)(a), whereby 'every taxable person shall issue an invoice, or other document serving as invoice, in respect of goods and services which he has supplied or rendered …', is of general application.

50. I therefore conclude that a recipient of services who is also the person liable to pay the VAT on those services may exercise his right of deduction under Article 18(1)(a) of the Sixth Directive only if he is in possession of an invoice issued in accordance with Article 22(3).

Second question

51. By its second question, the Bundesfinanzhof asks what contents the invoice should have. In its reasoning, it specifies that it is particularly interested in the question whether the invoice should state (i) the amount of the tax and (ii) the name and address of the supplier. Furthermore, it wishes to know (iii) whether the taxable transaction must be accurately described, specifically whether a reference to work done by staff supplied, rather than the supply of the staff itself (when that is what was actually provided) affects the validity of the invoice for VAT purposes.

52. It may be useful to consider the tax amount and the two other aspects separately, since the former is specifically mentioned in Article 22(3)(b), whereas the latter are not.

Tax amount

53. Under Article 22(3)(b) of the Sixth Directive the invoice must clearly state 'the price exclusive of tax and the relevant tax at each rate as well as any exemptions'.

54. The Bundesfinanzhof none the less doubts whether such an express statement is necessary in circumstances such as the present, where the customer rather than the supplier is liable directly to the tax authorities. The Commission and the German Government, in a similar vein, submit that Article 22(3)(b) should be interpreted in such cases to the effect that it is sufficient if the invoice expressly mentions that the recipient of the service is liable to pay the tax, or refers to the provision which establishes that liability. The Commission in that context suggests that a reverse-charge transaction (14) should be treated, for the purposes of Article 22(3)(b), as if it were

an exemption.

55. I agree, at least in so far as the result is concerned.

56. Where a taxable supply is made by a taxable person in one Member State to a taxable person in another Member State, and it is the latter who is liable to pay the VAT on the transaction, it is clear that a statement on the invoice of the price exclusive of tax is essential in order to ensure the proper operation of the VAT system. In the version of the Directive applicable at the material time, the invoice had to be issued by the supplier. (15)

57. To require the same supplier to indicate also the amount of tax due, however, poses at least two problems.

58. First, it would in principle render the supplier liable to pay the tax in accordance with Article 21(1)(c) – a result which could either lead to tax being levied twice or simply negate the whole reverse-charge mechanism. It is certain that no such result was intended by Article 21(1)(c), which is essentially a guard against fraud or loss of revenue, (16) but the provision is clear and unmitigated by any exception.

59. Second, on a more practical level, it would mean that the supplier must be fully conversant with the differing rules governing VAT rates in each Member State in which he provides services. The task is by no means impossible, but it would be infinitely better carried out by the customer who is liable to pay the tax in his own country; apart from any other consideration, the risk of error requiring cumbersome rectification is greatly reduced.

60. The evident incoherence and impracticality of this aspect of the legislation may well be due to the fact that, to a large extent, it was not drafted with reverse-charge cross-border transactions in mind. Prior to 1993, the VAT system operated, essentially, independently within each Member State, cross-border supplies of goods being in principle exempted (with deduction of input tax) in the Member State of origin and taxed on importation into the Member State of destination. While the essentials of all the provisions concerning services with which we are concerned in the present case were already in place in the 1977 version of the Directive, Article 22 in particular seems to have been designed to deal with domestic rather than cross-border situations. It is headed ‘Obligations under the internal system’, in contrast to ‘Obligations in respect of imports’ in Article 23. Prior to 1993, however, imports were ‘into the territory of the country’, whereas they are now ‘into the Community’. (17) The reference to Article 22(3) in Article 18(1)(a) would seem to have been originally conceived in that light. Such considerations plead in favour of a liberal interpretation.

61. It is in any event obvious – and it was accepted by all at the hearing – that the various applicable provisions of the Directive simply cannot all be applied literally to circumstances such as those of the present case without some absurdity in the result – for example, as I have just pointed out, that tax is levied twice or that the reverse-charge mechanism is set at nought. One or other provision must be interpreted more liberally, and the Court must determine which provision that must be, and what interpretation is to be given to it.

62. With regard to Article 22(3)(b), one point is clear: ‘as well as’ cannot bear a literal interpretation where a single supply is invoiced. A supply is either taxed or exempt, it cannot be both. If a supply consists of various elements, some of which are taxed (perhaps at differing rates) and some exempt, they must be itemised separately but each item can fall only within a single category. Many invoices however are for single supplies. In their case, and in the case of each item on a complex invoice, it is impossible to state an amount of tax ‘as well as’ an exemption. Article 22(3)(b) must therefore be interpreted – in any event – as meaning ‘the price exclusive of tax, together with the relevant tax at each rate *or, as the case may be,* any exemptions’.

63. The Commission favours such an interpretation and, in the present circumstances, goes one step further by suggesting that a reverse charge should be assimilated to an exemption for that purpose. That suggestion, it has made clear, is based significantly on the wording of Article 22(3)(b) as applicable from 1 January 2004. (18)

64. Whilst it seems clear that the new version is considerably more than a clarification of the old, I do not find the suggestion unreasonable even on the present wording. From the supplier’s

point of view, a reverse-charge transaction is very similar, in terms of liability to tax and entitlement to deduct, to an export transaction exempted under Article 15 of the Sixth Directive, with deduction or refund of input tax pursuant to Article 17(3)(b) – and from the customer's point of view it is comparable to an importation taxable under Article 2(2) with deduction under Article 17(2)(b). I thus favour an interpretation of Article 22(3)(b) to the effect that, for each item invoiced, the supplier must state the price exclusive of tax and, as the case may be, either the amount of tax to be charged or the exemption or reverse-charge mechanism applicable.

65. It is true that a not dissimilar result might be achieved by a liberal interpretation of Article 18(1) of the Directive, reading Article 18(1)(d) (applicable when the customer is liable to pay the tax under Article 21(1)) as an exception rather than a complement to the general rule in Article 18(1)(a), which requires possession of an invoice in accordance with Article 22(3)(b) whenever the right to deduct is based on Article 17(2)(a). In that case it would be for each Member State to lay down the formalities to be complied with, and a statement of the amount of tax need not be one of them.

66. I do not however favour such an interpretation. VAT is an area in which a degree of Community harmonisation is necessary. Whilst many matters of detail are indeed left to the Member States, it would not seem logical to have a Community rule for deduction of tax due or paid 'within the territory of the country' (19) and national rules for what are essentially cross-border transactions. And to take reverse-charge transactions entirely out of the scope of Article 18(1)(a) would even appear to remove the Community rule that an invoice must be held. As the Commission put it at the hearing with regard to Article 22(3)(c), Article 18(1)(d) is concerned more with 'how' than with 'whether' details are to be established.

67. I therefore take the view that, in the version applicable at the material time, Article 22(3)(b) requires the supplier to state, for each item invoiced, the price exclusive of tax and, as the case may be, either the amount of tax to be charged or the exemption or reverse-charge mechanism applicable, and that, if either of those statements is omitted, the invoice may be refused as justification of the customer's right to deduct.

Supplier's name and address – identification of the taxable transaction

68. The applicable version of Article 22(3)(b) does not however expressly require any further details except, in special circumstances which do not include those in the present case, the supplier's and customer's VAT registration number and certain particulars relating to new means of transport.

69. The list of details required is not however exhaustive. Member States may require further statements on the invoice. According to Article 22(8), 'Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion', provided that there is no discrimination between domestic transactions and intra-Community transactions, and that there are no formalities connected with the crossing of frontiers. The explanatory memorandum to the Commission's Proposal for a Sixth Directive (20) states that it was not considered necessary (at that stage) to harmonise the numerous and detailed national provisions concerning the delivery of invoices, and recital 1 in the preamble to Directive 2001/115 recognises that 'the current conditions laid down for invoicing and listed under Article 22(3) … are relatively few in number, thus leaving it to the Member States to define the most important such conditions'.

70. By contrast Directive 2001/115 now fully harmonises the contents of the invoice for VAT purposes, with effect from 1 January 2004. The list of required statements under Article 22(3)(b) has been significantly extended, including *inter alia* 'the full name and address of the taxable person and of his customer' and 'the extent and nature of the services rendered'. Further, only those details may be required. Member States are thus now precluded from imposing other particulars for VAT purposes. (21)

71. Consequently, neither the name and address of the supplier nor the identification of the taxable transaction is among the statements that the invoice must contain according to the version of the Directive applicable at the material time. Member States may however require the inclusion

of those and/or other statements. Their discretion in that regard is subject only to certain provisos concerning freedom of trade, but any additional requirements should obviously, in the interests of legal certainty, be duly promulgated before their application to individual cases.

72. The significance of particulars such as those under examination, and their contribution to the proper functioning of the VAT system, in particular to ensuring the correct collection of the tax and the prevention of evasion, are self-evident and confirmed – if confirmation were needed – by their inclusion in the list of compulsory statements following amendment by Directive 2001/115. (22)

73. To require the express indication of the name and address of the supplier, and indeed of the customer, even when the invoice already contains his VAT identification number, may prove useful. It provides an additional element of clarity and, should for instance there be a misprint in the VAT number, it can help to resolve any uncertainty as to the identity of the taxable persons.

74. Identification of the taxable transaction is clearly of great practical importance for determining what provisions are applicable. It is evident that, when mentioned, the taxable transaction must be defined correctly in accordance with the categories in the Directive, since a different qualification may trigger the application of different provisions of the Directive and possibly different tax rates. Definitions which are not accurate in that regard may prejudice the application of the Directive and distort competition.

75. In the case at issue, the invoice mentioned construction work done whereas the tax authorities consider that it should have mentioned the supply of staff to do that work. If a description of services invoiced is incorrect and thus liable to give rise to an incorrect application of VAT, it seems to me that the invoice may legitimately be regarded as invalid for VAT purposes in accordance with such rules as a Member State has adopted to that effect. It seems however that in Mr Bockemühl's case the tax authorities may have been motivated principally by concerns relating to possible circumvention of national provisions of employment and social security law. Such concerns, whilst clearly very important, are extraneous to the VAT rules and should not in my view be regarded as relevant to the ruling to be given in the present case.

76. My view is none the less that the applicable version of the Sixth Directive allows Member States to require suppliers to indicate their name and address and to identify accurately the nature of the supply, on any invoice used for VAT purposes, and thus to refuse the recipient a right to deduct if those particulars are absent or materially incorrect.

77. In *Jeunehomme* (23) the Court made it clear that 'as regards the exercise of the right to deduction … the Sixth Directive does no more than require an invoice containing certain information. Member States may provide for the inclusion of additional information to ensure the correct levying of value added tax and permit supervision by the tax authorities'. (24)

78. It did however also warn: 'the requirement on the invoice of particulars other than those set out in Article 22(3)(b) of the Sixth Directive, as a condition for the exercise of the right to deduction, must be limited to what is necessary to ensure the correct levying of value added tax and permit supervision by the tax authorities. Moreover, such particulars must not, by reason of their number or technical nature, render the exercise of the right to deduction practically impossible or excessively difficult'. (25) In my view, there is no such difficulty with fundamental particulars such as the name and address of the supplier and the (correct) identification of the taxable transaction.

Third question

79. The third question concerns the consequences in law of difficulties in establishing that the person who issued the invoice is the same as the supplier of the taxable service; it appears from the order for reference that the national court is concerned in particular with whether the burden of proof falls on the tax authority or the claimant.

80. Although the Directive does not deal explicitly with the issue of the proof by the taxable person of his right to deduct, I agree with both Germany and the Commission that the answer can again be found in Article 22(8).

81. Pursuant to that provision, Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion. Proper

identification of the supplier is indeed a useful element in that context. It follows that, as the Directive stands, Member States may indeed, in cases of doubt or where evasion is suspected, require proof that the person issuing the invoice and the person supplying the service are one and the same. (26) In the absence of Community provisions, the procedural rules governing that proof are also a matter for the Member States.

82. However, as the Court held in *Jeunehomme*, (27) the obligations imposed on the taxable person invoking the right to deduction must not be such as to render the exercise of that right in practice impossible or excessively difficult. It seems to me that that must be true irrespective of whether those obligations are of substantive or procedural nature. It is therefore for the national court to apply its own rules of proof in compliance with that requirement.

Conclusion

83. I accordingly conclude that the questions referred by the Bundesfinanzhof should be answered as follows:

(1)A recipient of services who is also the person liable to pay the VAT on those services and to whom that tax has been charged may exercise his right of deduction under Article 18(1)(a) of the Sixth Council Directive 77/388 only if he is in possession of an invoice issued in accordance with Article 22(3).

(2)In the version of that Directive applicable before 1 January 2004, Article 22(3)(b) requires the supplier to state, for each item on the invoice, the price exclusive of tax and, as the case may be, either the amount of tax to be charged or the exemption or reverse-charge mechanism applicable; if either of those statements is omitted, the invoice may be refused as justification of the customer's right to deduct. Article 22(8) allows Member States to require suppliers to indicate their name and address and to identify accurately the nature of the supply, on any invoice used for VAT purposes, and thus to refuse the recipient a right to deduct if those particulars are absent or materially incorrect.

(3)It is for the Member States to determine the consequences in law of difficulties in establishing that the person who issued the invoice is the same as the supplier of the taxable service, provided that the exercise of the right to deduction is not rendered in practice impossible or excessively difficult.

1 – Original language: English.

2 – 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.

3 – First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, OJ, English Special Edition 1967, p. 14.

4 – This latter situation is sometimes known as 'reverse charge' or 'tax shift'.

5 – Council Directive of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers, OJ 1991 L 376, p. 1.

6 – Council Directive of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax, OJ 1992 L 384, p. 47.

7 – For certain types of supply not in issue in the present case, Article 22(3)(b) also requires further details, including in particular the national VAT registration numbers of the two parties to the transaction.

8 – Council Directive of 20 December 2001 amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax, OJ 2002 L15, p. 24. Member States are to adopt measures to implement Directive 2001/115 with effect from 1 January 2004.

9 – In the version applicable at the material time, the words 'within the territory of the country' or their equivalent, which had been introduced by Directive 91/680, appeared to refer to the liability of the supplier in many language versions, including the English, French, Italian and Spanish. In the German version, however, they referred to the place where the tax was due or paid, and in the

Dutch to the place where the supply was made. Directive 95/7/EC of 10 April 1995 amending Directive 77/388/EEC and introducing new simplification measures with regard to value added tax – scope of certain exemptions and practical arrangements for implementing them, OJ 1995 L 102, p. 18, which entered into force on 1 January 1996, has since unified all language versions in line with the German. Thus the English version of Article 17(2)(a) now reads: 'value added tax due or paid *within the territory of the country* in respect of goods or services supplied or to be supplied to him by another taxable person' (emphasis added).

10 – See, among others, Case 106/89 *Marleasing* [1990] ECR I-4135, paragraph 8 of the judgment; Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 26.

11 – See note 9.

12 – See, for example, B.G.M Terra and J. Kajus, *A Guide to the European VAT Directives,* IBFD, Amsterdam, 1993, Vol. 2, Ch. XI.4.

13 – As Advocate General Slynn defined it in Joined Cases C-123/87 and C-330/87 *Jeunehomme* [1988] ECR 4517, at p. 4534.

14 – See note 4.

15 – In the version amended by Directive 2001/115 (cited above in note 8), Article 22(3)(a) no longer requires the supplier to issue the invoice but to 'ensure that an invoice is issued, either by himself or his customer or, in his name and on his behalf, by a third party'.

16 – See Case 342/87 *Genius Holding* [1989] ECR 4227; Case C-454/98 *Schmeink & Cofreth* [2000] ECR I-6973; and, in particular, Case C-427/98 *Commission* v *Germany* [2002] ECR I-8315, at paragraph 41 of the judgment.

17 – See the definition of 'importation' in Article 7 of the Directive, in the various applicable versions.

18 – See paragraph 13 above.

19 – And, pursuant to Articles 17(2)(b) and 18(1)(b), in relation to imports.

20 – .*Bulletin of the European Communities*, Supplement 11/73, at p. 21; what is now Article 22 was Article 23 in the original proposal.

21 – See also the second subparagraph to Article 22(8) added by Directive 2001/115 (quoted above in paragraph 15).

22 – Their omission hitherto may have been due simply to the assumption that any commercial invoice must necessarily identify the supplier and the supply in order to be of any practical use in normal trade.

23 – Cited in note 13.

24 – Ibid., paragraph 16 of the judgment.

25 – Ibid., paragraph 17 of the judgment.

26 – See also Case C-85/95 *Reisdorf* [1996] ECR I-6257, paragraph 29 of the judgment. However, it is to be noted that, as from 1 January 2004, it is expressly provided that the service provider and the issuer of the invoice need not be the same person (see note 15 above).

27 – Quoted in paragraph 78 above.