OPINION OF ADVOCATE GENERAL

TIZZANO

delivered on 11 November 2004 (1)

Case C-25/03

Finanzamt Bergisch Gladbach

and

HE

(Request for preliminary ruling from the Bundesfinanzhof (Germany))

(VAT – Sixth Directive 77/388/EEC – Building for residential purposes – Construction or purchase in co-ownership by two spouses – Partial use by one of the spouses as home office – Person liable for the tax – Whether deduction allowed – Invoicing requirements)

1. By order of 29 August 2002, received at the Court on 23 January 2003, the Bundesfinanzhof referred to the Court for preliminary ruling four questions relating to the interpretation of the Sixth Directive 77/388/EEC of the Council 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 ('the Sixth Directive'). (2)

2. In substance, the referring court wishes to know whether and to what extent a person who, with his spouse, has constructed or purchased a building for residential use may deduct, from the VAT for which he is liable, the VAT paid on the purchase or construction of that part of the building which he uses for the purposes of his business.

I – **Legal background**

A – *Community legislation*

3. This case involves certain provisions of the Sixth Directive which define the taxable person for VAT (Article 4), the right to deduct (Article 17) and the way that right is exercised (Articles 18 and 22).

4. Article 4 provides:

'1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of

the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

...'

5. In relation to the right to deduct, Article 17(2) states:

'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; (3)

...'.

6. Finally, in relation to how the right to deduct is to be exercised, Article 18 provides:

'1. To exercise his right to deduct, the taxable person must:

(a) in respect of deductions under Article 17(2)(a), hold an invoice, drawn up in accordance with Article 22(3);

...'.

7. Article 22(3) states:

'(a) Every taxable person shall issue an invoice, or other document serving as invoice in respect of all goods and services supplied by him to another taxable person, and shall keep a copy thereof.

...

(b) The invoice shall state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions.

(c) The Member States shall determine the criteria for considering whether a document serves as an invoice.' (4)

B – *National legislation*

8. As far as this case is concerned, Paragraphs 14 and 15 of the Umsatzsteuergesetz (Law on Turnover Tax; hereinafter 'the UStG'), in the version applicable to the years 1991 to 1993, are relevant.

9. Paragraph 14, headed 'Issue of invoices', provides:

'When a taxable person supplies goods or services which are taxable under Paragraph 1(1), points 1 and 3, he may and, to the extent to which he is carrying out these transactions with another taxable person must, at the latter's request, issue invoices which show separately the amount of the tax. The invoices must contain the following information:

1. the name and address of the taxable person making the supply of goods or services;

2. the name and address of the recipient of the supply of goods or services;

3. the amount and the usual commercial description of the goods sold or the nature and extent of the services supplied;

4. the date of the supply of goods or services;

5. the sum paid for the supply of goods or services (Paragraph 10) and

6. the amount of the tax on the sum paid (point 5).

...'. (5)

10. Paragraph 15, headed 'Deduction of input tax', states:

'A taxable person may deduct, as amounts subject to input tax:

1. the tax shown separately on invoices within the meaning of Paragraph 14 issued by other taxable persons for supplies of goods or services made for the purposes of his undertaking. …' (6)

II – **Facts and procedure**

11. The main proceedings are concerned with the decision of the Finanzamt Bergisch Gladbach ('the Finanzamt') to refuse Mr HE ('the claimant') permission to deduct, from the VAT for which he was liable to the tax authorities, the VAT paid on the construction of the part of his house (which he had purchased together with his wife) that he had set aside for use as an office for his business.

12. The order for reference shows that Mr and Mrs HE bought a plot of land in late 1990, ownership of which was shared in the following proportions: one quarter for Mr HE and three quarters for his wife.

13. Subsequently, they commissioned various companies to construct a building on that plot, to be used as a dwelling. Mr HE stated at the hearing that ownership of the building was divided between him and his wife in the proportions corresponding to ownership of the plot on which it was built, namely one quarter and three quarters.

14. All the invoices issued by the construction companies were made out to 'Mr and Mrs HE'.

15. The order for reference also shows that Mr HE, in addition to his main activity as an employee, also had an ancillary activity as a self-employed specialist writer; when engaged in the latter activity he used a room within the family house. Since that room represented 12% of the total surface area of the house, Mr HE, in his VAT returns for the years 1991 to 1993, had deducted, from the VAT due, an amount of 12% of the VAT paid on the construction of the house itself.

16. However, the Finanzamt rejected those deductions on the ground that, in its view, the purchaser and recipient of the building service was not Mr HE but the community comprising the two spouses, to which the invoices had been made out. According to the Finanzamt, that community did not itself operate as a business and did not therefore have the right to any deduction.

17. Mr HE brought an appeal against that decision before the Finanzgericht.

18. Allowing the appeal in part, the Finanzgericht, unlike the Finanzamt, took the view that it was irrelevant to whom the invoices had been issued, and identified Mr HE as the actual recipient of the building service for the home office; the court therefore acknowledged the claimant's right to

deduct a part of the VAT paid for that service. However, according to the Finanzgericht, Mr HE was the owner of the building, and therefore also of the office sited within it, in respect only of one quarter. The amount of the deduction could not therefore be fixed – as requested by Mr HE – at 12% of the VAT paid on the construction of the house, but only at one quarter of that 12%.

19. That judgment was challenged both by the Finanzamt and by Mr HE before the Bundesfinanzhof, which was thus called upon to choose between two completely opposing arguments.

20. According to the Finanzamt, in the absence of various pieces of information at the time the work was commissioned and subsequently when the invoices were made out, only the community comprising the spouses should be regarded, under Paragraph 15 of the UStG, as the recipient of the service consisting of the building of the house. An individual co-owner could not therefore deduct, even in part, the VAT paid on that building work.

21. According to Mr HE on the other hand, he had a right to deduction; in contrast to the decision in the judgment at first instance, that right should also be extended to all the VAT paid on the construction of the office, namely 12% of the total VAT. In practice, he would have exclusive enjoyment of that part of the house and should therefore be regarded as the only purchaser thereof.

22. The Bundesfinanzhof considers that national law provides a solution to this problem, since, on the basis of the case-law of the Bundesfinanzhof itself:

– where work has been commissioned by two persons who form a community but do not have the (tax) status of an independent legal person (a partnership or limited company), each of the co-owners is regarded as a recipient of the supply on a pro rata basis, unless they have agreed to the contrary; (7)

– at the material time, there was no express restriction on the deduction of tax in respect of the building and fitting out of a ‘room belonging to the dwelling but separate from the rest of the living area and used exclusively or almost exclusively for company and/or business purposes’ (a ‘home office’); (8)

– in the case of purchase in co-ownership of goods which are used by one of the co-owners for the purposes of his own business, the latter may deduct the input tax corresponding to his share in the community; (9)

– the fact that the invoices are issued to Mr and Mrs HE does not preclude deduction of the input tax paid. (10)

23. However, having some doubt as to the compatibility of that solution with the interpretation of the Sixth Directive, the Bundesfinanzhof referred the following questions to the Court for a preliminary ruling under Article 234 EC:

‘1. Is a person who purchases or builds a house for his own residential purposes acting as a taxable person in the purchasing or building of that residence if he intends to use one of its rooms as a “home office” for engaging in an ancillary activity as a self-employed person?

If Question 1 is answered in the affirmative:

2. Where a community by undivided shares or marital community which does not itself operate as a business places an order in common for a capital item, should it be assumed that the purchase concerned is made by a non-taxable person who is not entitled to deduct the value

added tax charged on the purchase as input tax, or are the members of that community recipients of the supply?

If Question 2 is answered in the affirmative:

3. Where spouses in a community by undivided shares purchase a capital item but that item is used by only one of those two spouses for the purposes of his business:

(a) is that spouse entitled to effect only a pro rata deduction in respect of the input tax attributable to his share as purchaser, or

(b) is that spouse entitled under Article 17(2)(a) of Directive 77/388/EEC to deduct as input tax the proportion attributable to his business use of the item as a whole (subject to the invoicing requirements set out in Question 4)?

4. For that spouse/co-owner to exercise his right to deduct in accordance with Article 18 of Directive 77/388/EEC, must he hold an invoice, as provided for under Article 22(3) of the directive, which has been issued to him alone and states the proportion of the payments and corresponding tax attributable to him, or is it sufficient for the spouses/co-owners to be issued with the invoice without any such apportionment of the amounts due?'

24. In the proceedings before this Court, the claimant, the Finanzamt and the Commission submitted written observations. The claimant and the Commission presented oral argument at the hearing on 23 September 2004.

III – **Legal analysis**

25. As we have seen, the national court raised four questions concerning the purchase or construction, by two spouses, of a building for residential use, which is used in part by one of them as a home office for the purposes of his own business.

The positions of the parties

26. In response to those questions, the Finanzamt, referring mostly to national tax provisions, observes that, in the case of purchase or construction of a building by persons forming a community but not having the status of an independent legal entity, an individual co-owner may have a right to deduct input VAT only if: (i) at the time the contract of sale or agreement is concluded, he has stated what part of the property he is setting aside for his own business; and (ii) an invoice has been issued for that transaction showing his share of the price and the tax. Only in that way will it be clear whether and to what extent an individual co-owner was the recipient of the taxable supply.

27. The claimant and the Commission on the other hand take a different view: they, for the reasons I will set out in the course of my analysis, reach the conclusion that:

– a person who purchases a building or has one built for residential use is acting as a taxable person if he uses a room in that building as an office for his own business and designates that office as an asset of his company;

– when persons who form a community, but not an independent entity which itself exercises an economic activity, purchase a capital item, all the individual co-owners must be regarded as beneficiaries of the transaction;

– in the case of purchase in co-ownership by two spouses of a capital item used for business

purposes by only one of them, the latter has the right to deduct the VAT paid which corresponds to the share of the capital item which he uses for his business.

28. On this latter point, the opinions of the claimant and the Commission in part diverge: in the Commission's view the right to deduct the VAT corresponding to the part of the capital item used for business purposes is subject to the condition that national law allows the spouse who exercises the economic activity subject to VAT to have enjoyment of the whole of the capital item. If on the other hand – the Commission goes on – national law provides otherwise, the spouse in question has the right to deduction only in respect of an amount which corresponds to his share of the co-ownership.

29. On the other hand, the claimant and the Commission coincide in the view that the right to deduction may not be denied to the spouse who exercises the activity subject to tax on the ground that he only holds an invoice which is made out to both spouses and does not show the price and tax which correspond to his share of the community.

Identification of the person who is the recipient of the supply in the case of construction or purchase in co-ownership of a property (Question 2)

30. In order to reply to the national court, it is appropriate, in my opinion, to begin with the second question and establish first of all whether, when people who constitute a community by operation of law or by voluntary agreement which does not itself exercise an economic activity order a capital item, the recipient of the supply requested is the community itself or the individual co-owners.

31. As we have seen, the Bundesfinanzhof has made it clear that, under its case-law, in such a case each of the co-owners is regarded, on a pro rata basis, as the recipient of the supply, unless there is an agreement to the contrary (see point 22 above).

32. In my opinion, that solution is not contrary to the Sixth Directive and to the common system it establishes.

33. That system provides that on every taxable transaction VAT is due only after deduction of the tax which has been paid directly on the cost of the various elements making up the price of the goods and services. In its turn, the system of deductions is so designed that only taxable persons may deduct the VAT already charged on the goods and services from the VAT for which they are liable.

34. That is the context of Article 4(1) of the Sixth Directive, which defines a taxable person for VAT as 'any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity'.

35. Article 17(1) of the Sixth Directive provides that '[t]he right to deduct shall arise at the time when the deductible tax becomes chargeable' and Article 17(2) entitles a taxable person, '[i]n so far as the goods and services are used for the purposes of his taxable transactions', to deduct 'from the tax which he is liable to pay ... value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person'.

36. We may conclude from the above that ‘the deduction system is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities’. The common system of value added tax therefore ensures ‘that all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT, are taxed in a wholly neutral way’. (11)

37. That being the case, it seems to me that the Commission is right to draw the conclusion from the foregoing that the community consisting of Mr and Mrs HE may not be regarded as a taxable person for VAT who is the recipient of the supply consisting of the construction of the building.

38. The reason for this is that, as the referring court also pointed out, such a community does not have legal personality and, as it does not itself exercise any independent economic activity, it does not constitute a taxable person for VAT within the meaning of Article 4(1). Consequently, from the point of view of value added tax, the community does not have independent status and does not stand between the providers of the building works and the two spouses, who must therefore be regarded as the actual recipients of the service provided.

39. Such a solution, as the claimant has rightly argued, is also consistent with the principle of the neutrality of VAT referred to above, for if it were to be concluded that the recipient of the service was the community, which does not have legal personality and is not a taxable person and cannot therefore make any deduction, the outcome would be that an individual co-owner who exercised an economic activity would be entirely prevented from making the deduction provided for and would therefore have to bear the VAT paid in connection with his business.

40. For the reasons set out above, my view is that when persons forming a community, by operation of law or voluntarily, which does not have legal personality and does not itself exercise any independent economic activity, order a capital item, the recipients of the supply within the meaning of the Sixth Directive are the individual members and not the community itself.

Whether a private individual who builds or purchases a building for residential purposes and uses a part of it for business purposes has the status of taxable person (Question 1)

41. By its first question, the referring court seeks to ascertain whether a private individual who builds or purchases a building for residential purposes is acting as a taxable person if he intends to use a part of that building as a ‘home office’ for an ancillary activity as a self-employed person.

42. Here too I would observe that, under Article 4(1) of the Sixth Directive, a taxable person means ‘any person who independently carries out in any place … [an] economic activity, … whatever the purpose or results of that activity’; and that the VAT deduction procedure is so designed that only persons who have that status ‘may deduct the VAT already charged on the goods and services from the VAT for which they are liable’. (12)

43. I would also refer, as does the Commission, to the fact that in the *Lennartz* case the Court made it clear that ‘a person who acquires goods for the purposes of an economic activity within the meaning of Article 4 does so as a taxable person’ and that whether, in a particular case, a taxable person has acquired goods for those purposes is to be determined in the light of ‘all the circumstances of the case, including the nature of the goods concerned and the period between the acquisition of the goods and their use for the purposes of the taxable person’s economic activity’. (13)

44. The order for reference shows that in the period in dispute (1991 to 1993) the claimant exercised an ancillary business as a specialised writer and that in the exercise of that business,

which was without any doubt an independent economic activity, he had exclusive use of a part of the building purchased with his spouse, from the time it was handed over. (14) On the basis of the case-law cited above and in the light of those findings of fact made by the referring court, it appears to me that, when he purchased the building, Mr HE acted in his capacity as a taxable person within the meaning of Article 4 of the Sixth Directive.

45. Nor can it be argued, moreover, that the claimant's status as such was diminished by the fact that he used only a part of the building for that economic activity.

46. The Commission and the claimant have rightly pointed out that the Court has held that when a taxable person 'acquires a capital item in order to use it for both business and private purposes' he may choose (i) to treat such an item 'as business goods the VAT on which is in principle wholly deductible'; (ii) to 'retain … it wholly within his private assets and thereby exclud[e] it in full from the system of VAT'; or (iii) (as Mr HE did in the present case) to integrate it into his business only in respect of the part which is given over to his business use. (15)

47. Choosing to use goods only partly for one's business does not therefore constitute a factor which is capable of causing the person who purchases them to lose the status of taxable person. On the contrary, that is one possibility which is made available to taxable persons by the system of the Sixth Directive specifically to ensure that they, in accordance with the principle of neutrality, bear 'the burden of VAT only when [such burden] relates to goods or services which [they] use … for [their] private consumption and not for [their] taxable business activities'. (16)

48. For the reasons set out above, my view is that a person who engages in an ancillary activity as a self-employed person, within the meaning of Article 4 of the Sixth Directive, is acting as a taxable person when he builds or purchases a building for residential purposes if he sets aside and uses a part of that building for the purposes of his business.

The extent of the right to deduction (Question 3)

49. By its third question, the national court seeks to ascertain whether, where spouses purchase as joint owners a property which is used in part by one of them for his business, that co-owner is entitled to effect a deduction which is: (i) equal to the tax paid on the construction of that part of the item which he uses (Question 3(b)); or (ii) a proportion, corresponding to his share of the co-ownership, of the tax paid on the construction of the part of the item used (Question 3(a)).

50. As I understand it, if the Bundesfinanzhof were to apply its own case-law, it would follow the latter approach and would therefore allow the co-owner a deduction of the input tax paid which corresponded to his share of the community. Clearly that would involve confirmation of the judgment given at first instance in which the Finanzgericht fixed the amount of the deduction not at 12% of the VAT paid on the construction of the house (that is to say, all the VAT paid on the building of the office) but only at one quarter of that 12%.

51. In that connection I would mention again that, according to the case-law of the Court, '[a] taxable person who acquires a capital item in order to use it for both business and private purposes' has three options: (i) to 'treat … [that capital item] as business goods the VAT on which is in principle wholly deductible'; (ii) to 'retain it wholly within his private assets', in which case 'no portion of the input VAT … paid on the acquisition of the item is … deductible'; and (iii) to assign it only in part – as the claimant did in this case – to the business, in which case it would seem correct to take the view that the right to deduction provided for by Article 17(2)(a) applies only to that portion of the property which is intended for the business on the basis of the proportions of business use and private use of the item itself. (17)

52. If this last solution, which is proposed for the situation where a property for mixed use is owned exclusively by the taxable person, is correct, then in the different situation we are discussing here, where the taxable person is only a co-owner, it would seem to me reasonable to take the view, as proposed by the Bundesfinanzhof, that he has the right to a deduction corresponding to the share of the co-ownership of the portion of the item which is partly used for the business.

53. There are two reasons for this. In the first place, that solution seems to me to be consistent with the principle of neutrality to which I have referred above. A co-owner is assumed to pay the VAT on the construction or purchase of the share of the capital item used for business purposes only on a pro rata basis. In the light of that principle, he should therefore only be relieved pro rata of the burden of the VAT paid on that part of the property

54. In the present case, Mr HE has stated that he is the co-owner of the building and therefore also of the part thereof that is used for business purposes (the office) in respect of one quarter only. It may therefore be assumed that he paid the VAT due on the construction of the office only on a pro rata basis (that is, one quarter), and that the remaining three quarters was paid by his spouse. Likewise, he must have paid the VAT due on the construction of the remaining part of the house used for residential purposes on a pro rata basis (again, one quarter).

55. If that is the case, then my view is that, in accordance with the principle of neutrality, the claimant cannot deduct all the VAT paid (*by him and by his spouse*) on the office, but only a quarter of it, for otherwise Mr HE would be deducting more VAT than he had actually paid on the office and he would thus in fact be exempted from a part of the VAT he had paid to the tax authorities, not in his capacity as a person exercising an independent economic activity but rather as a private consumer, for the remainder of the building intended for residential purposes.

56. In the second place, the proposed solution seems to me to be consistent with the principle of equal treatment. If, by virtue of the case-law referred to above, an individual who has exclusive ownership of a capital item for mixed use and assigns part of it to his business may deduct the VAT paid on the purchase (or construction) thereof, in proportion to the business use he makes of it, it would be discriminatory to apply the same solution also in the converse situation, where, as in the present case, he is only a part-owner of the property.

57. One might also argue, as does the Commission, that the extent of the deduction might depend on the rules adopted by the spouses for their joint ownership arrangements or property regime and that therefore the solution described above should be disregarded when, on the basis of those rules, an individual co-owner had unrestricted enjoyment of the entire property used. However, my fear is that, if such were the case, there would be risk of frustrating the purpose of the directive, which is specifically aimed at establishing a ‘common system of value added tax’. If that course were followed, the outcome would be that the extent of the deduction would ultimately differ from to on the basis of the relevant national civil-law provisions.

58. In the light of the considerations set out above, I propose that the Court rule in reply to the third question that a taxable person who purchases a property in co-ownership with his spouse and uses it in part for the purposes of his own independent business is entitled, under Article 17(2)(a) of the Sixth Directive, to deduct from the VAT for which he is liable the proportion of the VAT paid for the purchase of the part of the property used for business purposes which corresponds to his share of ownership.

The requirements for the invoice (Question 4)

59. By its fourth question, the national court seeks to ascertain whether Articles 18 and 22 of the Sixth Directive require that a taxable person who builds or purchases a capital asset in joint ownership with his spouse and uses it in part for his business as a self-employed person can only exercise his right to deduction if he is in possession of an invoice made out to himself which shows the proportion of the price and the tax which correspond to his share of ownership, or whether under those provisions an invoice made out to the spouses/co-owners which does not contain that information is sufficient.

60. The Bundesfinanzhof considers that, under its own case-law, an invoice like the one issued to the claimant and his wife, made out to 'Mr and Mrs HE', does not preclude deduction of the VAT paid by the claimant himself. (18) However, that court wonders whether the relevant provisions of the Sixth Directive might constitute an obstacle to such deduction.

61. In that connection I would mention that under Article 18(1)(a), '[t]o exercise his right to deduct, the taxable person must … hold an invoice, drawn up in accordance with Article 22(3)'. The latter provision in turn lays down that '[t]he invoice shall state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions' (b), and that '[t]he Member States shall determine the criteria for considering whether a document serves as an invoice'. (19)

62. Those provisions therefore do no more than to fix, as the Commission has also rightly observed, three minimum requirements (an indication of the price exclusive of tax, the corresponding tax at each rate and, where appropriate, any exemptions) which an invoice must always contain to give the right to deduction. However, they do not lay down any additional requirement for purchases in co-ownership of a capital item and in particular they do not require a statement on the invoice of the proportion of the price and tax corresponding to the purchasers' respective shares of ownership.

63. Therefore, if in such a case, as the referring court believes, the national rules do not require a statement of that type, there is, in my opinion, no reason to regard an invoice which meets the abovementioned requirements as inadequate and thus to deny a taxable person who uses the property purchased partly for business purposes the right to deduct granted to him by Article 17(2)(a).

64. For the reasons set out above, I therefore propose that the Court should rule in reply to the fourth question that Articles 18(1) and 22(3) of the Sixth Directive do not require that, in order to exercise the right to deduct referred to in Article 17(2)(a) of that directive, a taxable person who builds or purchases a capital item in co-ownership with his spouse, using a part thereof in the exercise of his business as a self-employed person, must hold an invoice issued to him which indicates the proportion of the price and tax that corresponds to his share of ownership.

IV – **Conclusion**

65. In the light of the foregoing considerations I propose that the Court should give the following answers to the questions on which the Bundesfinanzhof seeks a preliminary ruling:

(1) A person who engages in an ancillary activity as a self-employed person, within the meaning of Article 4 of the 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, is acting as a taxable person when he builds or purchases a building for residential purposes if he sets aside and uses a part of that building for the purposes of his business.

(2) When persons forming a community, by operation of law or voluntarily, which does not have legal personality and does not itself exercise any independent economic activity, order a capital item, the recipients of the supply within the meaning of the Sixth Directive are the individual members and not the community itself.

(3) A taxable person who purchases a property in co-ownership with his spouse and uses it in part for the purposes of his own independent business is entitled, under Article 17(2)(a) of the Sixth Directive, to deduct from the VAT for which he is liable the proportion of the VAT paid for the purchase of the part of the property used for business purposes which corresponds to his share of ownership.

(4) Articles 18(1) and 22(3) of the Sixth Directive do not require that, in order to exercise the right to deduct referred to in Article 17(2)(a) of that directive, a taxable person who builds or purchases a capital item in co?ownership with his spouse, using a part thereof in the exercise of his business as a self-employed person, must hold an invoice issued to him which indicates the proportion of the price and tax that corresponds to his share of ownership.

1 – Original language: Italian.

2 – OJ 1977 L 145, p. 1.

3 – Over the period of the events in this case, Article 17(2) of the Sixth Directive was amended by Council Directive 91/680/EEC 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). As a result of that amendment, which does not have any bearing on the outcome of this case but should be mentioned here for the sake of completeness, the provision cited now states: '[i]n 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 …'.

4 – Again for the sake of reasons of procedural completeness, mention should be made of the fact that Directive 91/680/EEC, cited above, also amended Article 22(3) of the Sixth Directive in the following terms: '(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. … (c) Member States shall lay down the criteria that shall determine whether a document may be considered an invoice. …'.

5 – Unofficial translation.

6 – Unofficial translation.

7 – See judgments of the Bundesfinanzhof (BFH) of 1 February 2001, V R 79/99, BFHE 194, 488, BFH/NV 2001, 989, and 7 November 2000, V R 49/99, BFHE 194, 270, BFH/NV 2001, 402; and most recently the judgment of 16 May 2002, V R 15/00, BFH/NV 2002, 1346.

8 – For the definition of a 'home office', see the letter from the Federal Finance Ministry of 16 June 1998, IV B 2 BS 2145 B 59/98, Paragraph 7, BStBl (Federal Tax Gazette) I 1998, 863.

9 – See judgment of the BFH of 1 October 1998, V R 31/98, BFHE 187, 78, BFH/NV 1999, 575.

10 – See judgments of the BFH in BFH/NV 2002, 1346, and in BFHE 194, 270, BFH/NV 2001, 402.

11 – Case 268/83 *Rompelman* [1985] ECR 655, paragraph 19.

12 – *Rompelman*, paragraph 16.

13 – C-97/90 *Lennartz* [1991] ECR I-3795, paragraphs 14 and 21.

14 – See the order for reference, part I and part II, paragraph 2(a).

15 – See Case C-415/98 *Bakcsi* [2001] ECR I-1831, paragraphs 25 and 26. See also *Lennartz*, paragraph 26, and Case C-291/92 *Armbrecht* [1995] ECR I-2775, paragraph 20.

16 – *Armbrecht*, paragraph 20.

17 – *Bakcsi*, paragraphs 25 and 26, *Lennartz*, paragraph 26, and *Armbrecht*, paragraphs 20 and 21.

18 – See the order for reference, part II, paragraph 3.

19 – See footnote 3.