OPINION OF ADVOCATE GENERAL

KOKOTT

delivered on 1 March 2007 1(1)

Case C-363/05

JP Morgan Fleming Claverhouse Investment Trust plc

The Association of Investment Trust Companies

v

Commissioners of HM Revenue and Customs

(Reference for a preliminary ruling from the VAT and Duties Tribunal, London)

(Value added tax – Exemption of the management of special investment funds – Concept of 'special investment funds as defined by Member States' – Closed?ended investment funds)

I – **Introduction**

1. Under the Sixth VAT Directive 77/388/EEC ('the Sixth Directive), (2) the management of investment funds is exempt from VAT. In *Abbey National*, (3) the Court – likewise on a reference from the VAT and Duties Tribunal, London – has already specified what activities are covered by the concept of *management* of investment funds and under what conditions management services which third parties supply to a fund are to be exempted from VAT.

2. The *Abbey National* case concerned open?ended funds constituted under trust law (authorised unit trusts – 'AUTs') and investment companies constituted under statute (open-ended investment companies – 'OEICs'). In the present proceedings, the question now arises whether the exemption also applies to certain closed?ended funds, namely investment trust companies ('ITCs'). Open?ended and closed?ended funds are essentially distinguished by the fact that the capital of open?ended funds varies through the issue and repurchase of shares by the fund, whereas the capital of closed?ended funds is fixed.

3. The uncertainty regarding the treatment of ITCs results from the fact that the Sixth Directive refers to national law for the definition of a special investment fund entitled to exemption from VAT. Although there are general rules governing ITCs in the United Kingdom, ITCs do not enjoy exemption from VAT under national law. It must therefore be established how far the Member States' powers of definition extend and what limits are placed on them in that regard by, in particular, the principle of the neutrality of VAT.

II – **Legal context**

A – *Community law*

4. Under Article 13(B) of the Sixth Directive,

‘Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:

…

(d) the following transactions:

…

6. management of special investment funds as defined by Member States; …’

5. Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (4) harmonises the national rules for investment funds. Under the second indent of Article 1(2) of that directive, however, only open?ended funds the units of which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings’ assets fall within its scope. Closed?ended funds, by contrast, are expressly excluded from the scope of the directive (first indent of Article 2(1) of Directive 85/611).

B – *National law*

6. In the United Kingdom, the exemption laid down in the Sixth Directive for the management of investment funds and investment companies was implemented by Items 9 and 10 of Group 5 of Schedule 9 to the Value Added Tax Act 1994 (‘the VAT Act 1994’). The rules apply in particular to AUTs (Item 9) and OEICs (Item 10), but not to ITCs.

7. The provisions of the VAT Act 1994 as since amended refer for the definition of exempt undertakings to the provisions on collective investment schemes in Part XVII of the Financial Services and Markets Act 2000 (‘the FSMA’). The FSMA transposes Directive 85/611 into national law. ITCs are not collective investment schemes within the meaning of the FSMA. Unlike AUTs and OEICs, they do not need to be authorised as investment funds by the Financial Services Authority (‘the FSA’) but are regulated by it as the listing authority.

8. In order for a company to be recognised as an ITC within the meaning of income and corporation tax law, a number of conditions are set out in Section 842 of the Income and Corporation Taxes Act 1988. That provision is referred to in other legislation. In addition, the rules on investment companies laid down in the Companies Act 1985 also apply to ITCs.

III – **Facts and questions referred for a preliminary ruling**

9. ITCs are risk-spreading pooled investment vehicles which are listed as public limited companies on the stock exchange and invest in a portfolio of investments. The investors hold shares in the company. In contrast to AUTs and OEICs, the number of shares remains unchanged (subject to any increases in share capital). The investors have no right to have their shares repurchased by the company, unlike in the case of the other types of fund. Instead, where appropriate, they have to sell their shares on the stock exchange. The stock market value of the shares depends on supply and demand, the value of the ITC's portfolio of investments being a significant, but not the only, factor in the valuation.

10. JP Morgan Fleming Claverhouse Investment Trust plc is an ITC. It receives supplies of management services in relation to its investments from a third party, JP Morgan Fleming Asset Management (UK) Limited, in respect of which it currently pays VAT. It appealed to the VAT and Duties Tribunal against the charge of VAT on the supplies of fund management which it receives. By order of 19 September 2005, the VAT and Duties Tribunal referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Are the words "special investment funds" in Article 13B(d)(6) of the Sixth Directive capable of including closed-ended investment funds, such as ITCs?

(2) If the answer to the first question is in the affirmative, does the phrase "as defined by Member States" in Article 13B(d)(6):

(a) allow Member States to select certain of the "special investment funds" within their jurisdiction to benefit from the exemption of the supply of management services and exclude others from the exemption, or

(b) does it mean that the Member States are to identify those funds within their jurisdiction which fall within the definition of "special investment funds" and that the benefit of exemption should extend to all such funds?

(3) If the answer to the second question is that Member States can select which "special investment funds" benefit from the exemption, how do the principles of fiscal neutrality, equal treatment and the prevention of distortion of competition affect the exercise of that discretion?

(4) Does Article 13B(d)(6) have direct effect?'

IV – **Legal assessment**

A – *Preliminary observations*

11. The concept of 'management of special investment funds' is not defined more precisely in Article 13B(d)(6) of the Sixth Directive itself. The phrase nevertheless contains two elements which require definition, namely 'management 'and 'special investment funds'.

12. As the Court held in *Abbey National,* the definition of what constitutes *management* within the meaning of the abovementioned provision is a question solely of Community law. According to settled case?law, the exemptions provided for in Article 13 of the Sixth Directive are in fact concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another. (5)

13. According to the express wording of the Sixth Directive, it is, by contrast, for the Member States to define more precisely the special funds in question. In *Abbey National* the Court stated in this regard as follows:

‘While, consequently, the Member States may not alter their content, in particular in laying down conditions of application [meaning “of the Sixth Directive”], that cannot however be so where the Council has specifically conferred on them the task of defining certain terms of an exemption.’ (6)

14. That wording is misleading. The Court appears to allow the Member States discretion to alter the content of the Sixth Directive, which in general is the prerogative of the Community legislature.

15. What the Court must in fact have meant is that the Sixth Directive refers, in certain specified cases, to the more precise definition of a concept by the national legal systems and thus leaves it to the Member States to flesh out those concepts. Such references to national definitions are to be found in numerous places in the Sixth Directive. Thus, for example, it is for Member States to define the medical and paramedical professions whose services are to be exempt from VAT pursuant to Article 13A(1)(c) of the Sixth Directive. In addition, exemption for services supplied by public welfare or charitable organisations is dependent on the appropriate status having been conferred on them by Member States. (7)

16. It is true that, as a consequence of that legislative technique, the conditions for the application of the Sixth Directive may differ from Member State to Member State. It nevertheless creates, in spheres which the Community legislature has not harmonised down to the finest detail, a degree of legal certainty because the relevant rules of the Member States can still be used. The latter retain a discretion which enables them to make the granting of an exemption dependent on compliance with certain standards laid down in national law in the light of the circumstances existing in the Member State in question.

17. The Member States’ discretion is limited, first, by the wording, meaning and purpose of the relevant provision of the Sixth Directive itself. (8) Accordingly, the Member States are precluded from classifying undertakings as special investment funds within the meaning of Article 13B(d)(6) of the Sixth Directive if, a priori, having regard to the meaning and purpose of the provision, those bodies do not fall within the scope of that concept. Secondly, the Member States must also observe certain general principles underlying the Sixth Directive, such as, in particular, the principle of the neutrality of VAT. (9)

B – *The first question*

18. The first question seeks to ascertain whether closed?ended funds such as ITCs can actually constitute ‘special investment funds’ within the meaning of Article 13B(d)(6).

19. In *Abbey National*, which was delivered after the order for reference was made in the present case, the Court has already held that the exemption of management of special investment funds applies irrespective of their legal form and applies both to undertakings for collective investment constituted under the law of contract or trust law and to those constituted under statute. (10)

20. It is true that funds without legal personality, that is, funds constituted under the law of contract or trust law, are primarily reliant on management services supplied by an external fund manager. On the other hand, investment companies constituted under statute may in principle be self?managed without making use of a third party. (11) However, if investment funds constituted under statute do make use of an external fund manager, they are in the same position as funds without legal personality. (12) As the Court has already held in *Abbey National*, it would be

contrary to the principle of fiscal neutrality if the management services supplied to funds constituted under statute were subject to VAT, whereas the management of funds in other legal forms were exempt. (13)

21. ITCs are public limited companies, that is, special investment funds with legal personality which are established by their statutes. There are no obvious relevant differences between funds in that legal form and other investment companies established by their statutes – such as OEICs – which would preclude, a priori, classification of the abovementioned closed?ended funds as special investment funds within the meaning of Article 13B(d)(6) of the Sixth Directive.

22. That conclusion is not undermined by the fact that Directive 85/611 does not apply to closed?ended funds. It is true that in *Abbey National* the Court referred, in answer to the question of what is to be regarded as VAT?exempt management of an investment fund, to certain provisions of Directive 85/611. However, the Sixth Directive was adopted long before Directive 85/611 and covers a different field from that directive. (14) Directive 85/611 therefore does not permit any compelling inferences as to which undertakings can be covered by the exemption in Article 13B(d)(6) of the Sixth Directive.

23. Moreover, closed?ended funds were not excluded from the scope of Directive 85/611 for reasons which were capable of being applied to the interpretation of the Sixth Directive. Rather, the legislature proceeded gradually in harmonising the rules on investment funds and reserved legislation on closed?ended funds for a later date. (15)

24. The answer to the first question must therefore be that the words ‘special investment funds’ in Article 13B(d)(6) of the Sixth Directive are capable of including closed?ended investment funds, such as ITCs.

C – *The second and third questions*

25. The second and third questions, which should be discussed together, seek to ascertain the extent of the Member States’ powers in defining special investment funds whose management is exempt from VAT under Article 13B(d)(6) of the Sixth Directive.

26. The referring tribunal considers two possible interpretations. According to the first, a Member State may select certain special investment funds within its jurisdiction *for the purposes of exemption from VAT* of management services pursuant to Article 13B(d)(6) of the Sixth Directive and exclude others from exemption. According to the second, the management of all special investment funds which Member States have defined as such is exempt from VAT.

27. It must first be observed in this connection that the concept of the ‘special investment fund’ itself is not a legal concept of national law, as is also pointed out by the Commission. The fact that a form of investment is recognised as an investment fund under national law is therefore not automatically sufficient in itself to permit the inference that such a fund is also a special investment fund within the meaning of the Sixth Directive. On the contrary, in exercising their discretion, Member States must specify which bodies are to be regarded as special investment funds whose management is exempt from VAT. In so doing, they may, in principle, also exclude certain kinds of investment fund from the exemption, even if certain aspects of those investment funds are governed by specific rules under national law. (16)

28. The mere fact that ITCs are recognised as investment funds under United Kingdom law does not therefore mean that it must be concluded that the management of funds of that category is to be exempted from VAT. On the contrary, it must be considered whether the national legislature exercised its discretion correctly in not extending the exemption to include the management of

ITCs.

29. When exercising their discretion, the Member States must have regard to the objectives pursued by exemption and to the principle of fiscal neutrality. (17)

30. The objective of the exemption of the management of special investment funds from VAT is in particular to avoid making access to that form of investment more difficult for small investors. If the exemption did not exist, the owners of units in investment funds would have a greater tax burden than investors who invest their money directly in shares or other securities and do not have recourse to the services of a fund management. (18) It is precisely small investors for whom investment in investment funds is particularly important. Because of the small volume of investment available to them, they have only a restricted opportunity of investing their money directly in a wide spread of securities. In addition, they often do not have the necessary knowledge for comparing and selecting securities. (19)

31. As the United Kingdom Government does indeed correctly point out, the exemptions envisaged in Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that turnover tax is to be levied on all services supplied for consideration by a taxable person. (20) However, the interpretation of the terms used in that provision must be consistent with their objectives. (21) This means that Member States must not circumscribe the special investment funds whose management is exempt from VAT too narrowly. (22) Otherwise the objective of not making the investment of money in common funds more difficult would not be achieved.

32. In particular, they must not exclude from the exemption any common funds which fall within the scope of Directive 85/611, by which the Member States' power of definition is now overlaid. (23) Since that directive approximates the national provisions on certain types of common fund at a high level for the protection of investors, the common funds covered by the Directive are in fact especially suitable for investment by small investors.

33. Member States are entitled to exclude other forms of investment funds which do not fall within the scope of Directive 85/611 from the exemption, provided that this is consistent with the principle of fiscal neutrality.

34. The principle of fiscal neutrality is first alluded to in the fifth recital in the preamble to the First VAT Directive, (24) which states: 'Whereas a system of value added tax achieves the highest degree of simplicity and of neutrality when the tax is levied in as general a manner as possible and when its scope covers all stages of production and distribution and the provision of services …'.

35. The Court has attached importance to that principle in various situations. In connection with the right to deduct input tax, that principle requires neutrality in terms of value, that is to say, the tax on inputs must be deductible in full from the tax which is payable on supply to the final customer. (25) This prevents multiple taxation of a supply being dependent on the number of preceding input stages.

36. In other contexts, there is greater emphasis on the aspect of equal treatment of all supplies or all taxpayers as regards the levying of VAT and the applicable rate of VAT. (26) The forms of words which the Court has chosen to describe that application of the principle of neutrality vary.

37. In a number of decisions it has stated: 'The principle of fiscal neutrality precludes … economic operators carrying on the same activities from being treated differently as far as the levying of VAT is concerned.' (27)

38. In other judgments, the Court has stated that the principle of fiscal neutrality precludes, in particular, ‘treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes’. (28) The Court has frequently added by way of clarification in this regard that the identity of the manufacturer or the provider of the services and the legal form by means of which they exercise their activities are, as a rule, irrelevant in assessing whether products or services supplied are similar. (29)

39. Those formulations each emphasise different aspects: in some cases equal treatment for economic operators and in others equal treatment for the services supplied by them. However, they are based on the same understanding of the principle of neutrality. Its scope would, in particular, be too restricted if, on the basis of the phrase quoted in point 37, only identical services had to be treated equally for tax purposes, as the United Kingdom Government contends. Rather, in addition to that, the principle of neutrality also requires equal treatment for supplies which serve the same purpose, are interchangeable and are therefore in competition with each other.

40. The United Kingdom fears that, on that interpretation of the principle of neutrality, the scope of the exemption from VAT for special investment funds would become boundless. Exemption would then also have to be extended to the management of numerous other forms of pooled investments, such as pension funds, unit?linked life assurance policies, investment clubs and venture capital trusts.

41. As the Commission correctly points out, however, the only issue in these proceedings is whether the management of closed?ended investment funds such as ITCs falls under the exemption referred to in Article 13B(d)(6) of the Sixth Directive. How certain other investment vehicles should be assessed having regard to the objectives of that provision and to the principle of fiscal neutrality remains a hypothetical question.

42. The United Kingdom Government further submits that, even if the existence of a competitive relationship is the decisive factor, the difference in tax treatment has no effect on it, because the amount of the extra tax burden borne by ITCs is in practice too small.

43. That cannot be accepted. The principle of fiscal neutrality precludes unequal treatment of similar and therefore competing goods or services as regards exemption from VAT. Breach of that principle does not require the unequal taxation actually to result in a demonstrable distortion of competition. Otherwise exemption would apply on a case?by?case basis. That is because the actual influence of the taxation of fund management on competition depends on the underlying circumstances of the individual case, such as, for example, the cost structure of the particular type of fund and the price sensitivity of the fund segment concerned.

44. However, in the context of assessing observance of the principle of neutrality, the comparability of the management activities themselves or the equal treatment of the external fund managers is not in issue in this case. The decisive factor is, rather, the comparability of the investment funds whose market position may affect the tax burden on the fund management. In that situation, the principle of fiscal neutrality therefore precludes any difference in the tax treatment of supplies depending on the recipient of the supply in so far as the recipients of the supplies are for their part comparable and in competition with each other.

45. In its order for reference, the referring tribunal states that ITCs, in the same way as AUTs and OEICs, enable private investors to invest in widely spread portfolios of investments and thus reduce stock market risk. Moreover, with all types of fund, private investors benefit from professional fund management, the expenses of which are shared, and from reduced overall dealing and administrative costs. ITCs also fulfil the same functions for institutional investors. This

indicates that ITCs are comparable to the types of fund (AUTs and OEICs) which are entitled to exemption from VAT and in competition with them. Consequently, their management should also be exempted from VAT.

46. Unequal treatment would be permissible only if the various types of fund did not serve in the same way to achieve the objectives of the exemption. The exemption is intended inter alia to facilitate access for small investors to investment in securities through collective investment. That group of investors is scarcely able to monitor the activities of a fund itself and is therefore particularly reliant on statutory protection mechanisms.

47. In so far as Article 13B(d)(6) of the Sixth Directive refers to the definition of special investment funds by Member States, the provision leaves it to them to establish the legal framework for the structure and management of the investment vehicles entitled to exemption from VAT. It would be consistent with the objectives of the exemption if, in exercising that power of definition, Member States also allowed themselves to be guided by the extent to which investor protection is ensured in the case of a given type of fund.

48. In the case of funds covered by Directive 85/611, the Member States no longer retain any discretion in that respect; in their case an adequate level of investor protection must be assumed. Other forms of investment fund, on the other hand, may be excluded from the exemption if they do not ensure a level of investor protection comparable to that ensured by funds whose management is exempt.

49. It is for the referring tribunal to establish whether the level of investor protection afforded by ITCs is comparable to that afforded by AUTs and OEICs. Depending on the type of fund, quite different mechanisms, leading in effect to a comparable level of protection, can be employed for that purpose.

50. The answer to the second and third questions must therefore be that Article 13B(d)(6) of the Sixth Directive confers on Member States the power to determine the special investment funds whose management is exempt from VAT. In exercising that power, Member States must have regard to the wording and objectives of the provision and to the principle of fiscal neutrality which requires all similar and therefore competing special investment funds to be treated equally as regards the levying of VAT.

D – *The fourth question*

51. If, in exercising its power to define exempt special investment funds within the meaning of Article 13B(d)(6), a Member State has failed to have regard to the principle of fiscal neutrality and wrongly omitted to include certain funds, the question arises as to whether the Sixth Directive has direct effect in favour of the persons concerned.

52. It should be recalled in this connection that, wherever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may, in the absence of implementing measures adopted within the prescribed period, be relied upon as against any national provision which is incompatible with the directive or in so far as the provisions define rights which individuals are able to assert against the State. (30)

53. Article 13B(d)(6) of the Sixth Directive describes sufficiently precisely and unconditionally which activity is to be exempted from VAT, so that individuals may rely directly on that provision.

54. That is not contradicted by the fact that the Member States have a discretion in defining the special investment funds whose management is exempt. If the national legislature has exceeded

the limits of that discretion, an individual can in any event then demand, in direct reliance on Article 13B(d)(6) of the Sixth Directive, exemption from VAT if, according to objective criteria, it can be ascertained that he should in fact have been included among those entitled to exemption. (31) In the case of breach of the principle of neutrality, the taxpayer must demonstrate that the fund concerned is similar to the funds enjoying exemption under national law and in competition with them.

55. In reply to a taxpayer in that situation a Member State is not entitled to raise the fact that it has not adopted provisions defining the type of fund concerned as a special investment fund. (32) A Member State cannot *a fortiori* refer to national provisions which it has adopted in exercising that power of definition but which are contrary to the principle of fiscal neutrality. (33)

56. The answer to the fourth question must therefore be that Article 13B(d)(6) of the Sixth Directive has direct effect in favour of those who, under national law, in breach of the principle of fiscal neutrality, do not enjoy the exemption from VAT laid down in that provision.

V – **Conclusion**

57. In the light of the foregoing considerations, I propose that the Court should reply as follows to the questions referred by the VAT and Duties Tribunal:

(1) The words ‘special investment funds’ in Article 13B(d)(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment are capable of including closed?ended investment funds, such as investment trust companies.

(2) Article 13B(d)(6) of the Sixth Directive confers on Member States the power to determine the special investment funds whose management is exempt from VAT. In exercising that power, Member States must have regard to the wording and objectives of the provision and to the principle of fiscal neutrality which requires all similar and therefore competing special investment funds to be treated equally as regards the levying of VAT.

(3) Article 13B(d)(6) of the Sixth Directive has direct effect in favour of those who, under national law, in breach of the principle of fiscal neutrality, do not enjoy the exemption from VAT laid down in that provision.

1 – Original language: German.

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). That directive was repealed with effect from 1 January 2007 and replaced by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

3 – Case C-169/04 *Abbey National and Inscape Investment Fund* [2006] ECR I-4027.

4 – OJ 1985 L 375, p. 3, last amended by Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees (OJ 2005 L 79, p. 9).

5 – See Case C-358/97 *Commission* v *Ireland* [2000] ECR I-6301, paragraph 51; Case C?428/02 *Fonden Marselisborg Lystbådehavn* [2005] ECR I-1527, paragraph 27; and *Abbey National and Inscape Investment Fund*

, cited in footnote 3, paragraph 38.

6 – *Abbey National and Inscape Investment Fund*, cited in footnote 3, paragraph 39, with reference to Case C?468/93 *Gemeente Emmen* [1996] ECR I-1721, paragraph 25.

7 – See, for example, Article 13A(1)(b), (g), (h), (i), (l) and (n) of the Sixth Directive.

8 – See *Gemeente Emmen*, cited in footnote 6, paragraph 25; Case C-346/95 *Blasi* [1998] ECR I-481, paragraph 21; and my Opinion in Joined Cases C-443/04 and C?444/04 *Solleveld and van den Hout-van Eijnsbergen* [2006] ECR I-3617, point 23.

9 – See Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 55 et seq.; Case C-45/01 *Dornier* [2003] ECR I-12911, paragraph 69; *Solleveld and van den Hout-van Eijnsbergen*, cited in footnote 8, paragraphs 35 and 36; and points 23 and 37 et seq. of the Opinion in that case.

10 – Cited in footnote 3, paragraph 53.

11 – See for more detail in that regard the Opinion of Advocate General Poiares Maduro in Case C?8/03 *BBL* [2004] ECR I-10157, point 26, and my Opinion in *Abbey National and Inscape Investment Fund*, cited in footnote 3, point 29 et seq.

12 – See Opinion in *Abbey National and Inscape Investment Fund*, cited in footnote 3, point 32, and Opinion in *BBL*, cited in footnote 11, point 27.

13 – *Abbey Nationaland Inscape Investment Fund*, cited in footnote 3, paragraph 56.

14 – See Opinion in *Abbey National and Inscape Investment Fund*, cited in footnote 3, point 79.

15 – See the sixth recital in the preamble to Directive 85/611.

16 – As held by the Court in *Solleveld and van den Hout-van Eijnsbergen*, cited in footnote 8, paragraph 33, in regard to the power of the Member States to define the paramedical professions falling within the scope of the exemption from VAT under Article 13A(1)(c) of the Sixth Directive.

17 – See the case?law cited in footnotes 8 and 9.

18 – See *Abbey National and Inscape Investment Fund*, cited in footnote 3, paragraph 62; points 27 and 68 of the Opinion in that case; and Opinion in *BBL*, cited in footnote 11, point 26.

19 – Opinion in *Abbey National and Inscape Investment Fund*, cited in footnote 3, point 28.

20 – See inter alia Case C-8/01 *Taksatorringen* [2003] ECR I-13711, paragraph 36; Case C-498/03 *Kingscrest and Montecello* [2005] ECR I-4427, paragraph 29; *Abbey National and Inscape Investment Fund*, cited in footnote 3, paragraph 60; and Case C-401/05 *VDP Dental Laboratory* [2006] ECR I?0000, paragraph 23.

21 – See *Dornier*, cited in footnote 9, paragraph 42, and *Kingscrest and Montecello*, cited in footnote 20, paragraph 29.

22 – See Case C?76/99 *Commission* v *France* [2001] ECR I-249, paragraph 23. The Court holds in that paragraph that Article 13A(1)(b) of the Sixth Directive does not call for an especially narrow interpretation since the exemption of activities closely related to hospital and medical care is designed to ensure that the benefits flowing from such care are not hindered by the increased costs of its provision that would follow if it, or closely related activities, were subject to VAT.

23 – See Opinion in *Abbey National and Inscape Investment Fund*, cited in footnote 3, point 38.

24 – 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 (I), p. 14). That directive was repealed with effect from 1 January 2007 and replaced by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

25 – See in this regard, for example: Case 268/83 *Rompelman* [1985] ECR 655, paragraph 19; Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I?1577, paragraph 44; Case C?16/00 *Cibo Participations* [2001] ECR I-6663, paragraph 27; and Case C-465/03 *Kretztechnik* [2005] ECR I-4357, paragraph 34.

26 – *Solleveld and van den Hout-van Eijnsbergen*, cited in footnote 8, paragraph 35. See also *Dornier*, cited in footnote 9, paragraph 74, in which the Court bases its finding directly on the principle of equal treatment.

27 – Case C-216/97 *Gregg* [1999] ECR I-4947, paragraph 20. See also Case C-404/99 *Commission* v *France* [2001] ECR I-2667, paragraph 45; *Kügler*, cited in footnote 9, paragraph 30; and *Abbey National and Inscape Investment Fund*, cited in footnote 3, paragraph 56.

28 – Case C-109/02 *Commission* v *Germany* [2003] ECR I-12691, paragraph 20; Joined Cases C?453/02 and C-462/02 *Linneweber and Akritidis* [2005] ECR I-1131, paragraph 24; Case C-246/04 *Turn- und Sportunion Waldburg* [2006] ECR I-589, paragraph 33; and *Solleveld und van den Hout-van Eijnsbergen*, cited in footnote 8, paragraph 39. The Court emphasised the importance of the neutral levying of VAT for competition as long ago as 1979 in Case 126/78 *Nederlandse Spoorwegen* [1979] ECR 2041, paragraph 12.

29 – *Linneweber and Akritidis*, cited in footnote 28, paragraph 25, with further references. However, in other situations, certain characteristics of the supplier, such as, for example, his professional qualifications, may constitute a difference that is relevant to the tax treatment of the supply (see *Solleveld and van den Hout-van Eijnsbergen*, cited in footnote 8, paragraph 40 et seq.).

30 – See Case 8/81 *Becker* [1982] ECR 53, paragraph 25; *Kügler*, cited in footnote 9, paragraph 51; and *Linneweber and Akritidis*, cited in footnote 28, paragraph 33.

31 – See, to that effect, *Dornier*, cited in footnote 9, paragraph 81, and *Kügler*, cited in footnote 9, paragraphs 55 to 57.

32 – See, to that effect, *Linneweber and Akritidis*, cited in footnote 28, paragraph 35.

33 – See *Linneweber and Akritidis*, cited in footnote 28, paragraph 36 et seq.