

OPINION OF ADVOCATE GENERAL

Sharpston

delivered on 20 November 2008 (1)

Case C-302/07

J D Wetherspoon PLC

v

The Commissioners for Her Majesty's Revenue & Customs

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

(Rounding of amounts of VAT)

1. Whatever the rate of VAT charged on transactions, there will be cases in which the amount due comprises a fraction of the smallest currency unit used in payment. In such cases, a need for rounding will arise, and may call for regulation.

2. In *Koninklijke Ahold*, (2) in answer to two questions from the Netherlands Hoge Raad (Supreme Court), the Court ruled essentially that, provided that the principles of fiscal neutrality and proportionality are observed, it is for Member States to regulate such rounding, and Community law does not oblige them to allow taxable persons to round the amount down for each item supplied.

3. The present reference for a preliminary ruling from the VAT and Duties Tribunal, London, poses two questions similar to those recently answered in *Koninklijke Ahold*, together with two further questions of a more detailed nature. In these, it asks first whether Community law requires rounding at a particular level (such as each item supplied, or each transaction, or some other level). Second, it seeks clarification of the effect of the principles of equal treatment and fiscal neutrality, by reference to a national concession allowing only certain traders to round VAT amounts down.

Relevant Community law

4. The period relevant to the main proceedings stretches from 2004 to 2006. Consequently, the applicable Community law was to be found in the First and Sixth VAT Directives. (3) I have cited the relevant provisions in points 3 to 12 of my Opinion in *Koninklijke Ahold*, to which I refer. It is, however, helpful to recall them.

5. Under the first and second paragraphs of Article 2 of the First VAT Directive, the principle of

the VAT system involves the application to goods and services of a general tax on consumption exactly proportional to their price, whatever the number of transactions in the production and distribution process. VAT at the applicable rate is charged on each transaction after deduction of the amount of VAT borne directly by the various cost components.

6. Article 2(1) of the Sixth VAT Directive states that the supply of goods for consideration, by a taxable person acting as such, is to be subject to VAT.

7. Under Article 10(1) and (2), the chargeable event is the occurrence by virtue of which the legal conditions necessary for tax to become chargeable are fulfilled, namely when the tax authority becomes entitled to claim the tax from the person liable to pay, notwithstanding that the time of payment may be deferred. That occurs in principle when goods are delivered or services performed.

8. Article 11A lays down the general rule that the taxable amount is, essentially, the whole consideration obtained by the supplier for the supply, whether from the customer or from any other source.

9. Article 12(3)(a) provides that the standard rate of VAT is to be fixed by each Member State as a percentage of the taxable amount, at not less than 15%, and that Member States may also apply either one or two reduced rates.

10. Article 17(1) and (2) gives taxable persons the right to deduct from the output tax for which they must account the amount of VAT they have paid on input supplies used for the purposes of their taxable output transactions. Under Article 18(1)(a), in order to deduct the taxable person must hold an invoice drawn up in accordance with Article 22(3).

11. Article 22(3)(a) requires taxable persons to ensure that an invoice is issued in respect of each taxable supply they make to another taxable person or to a non-taxable legal person (by implication, there is no such requirement for supplies to final consumers who are natural persons), and Article 22(3)(b) requires that invoice to include, among other information, the taxable amount, the VAT rate applied, the VAT amount payable and the customer's full name and address. Article 22(9)(d), however, allows Member States to provide that certain invoices, in particular those for smaller sums, need not contain all the information usually required; they must always indicate, none the less, 'the tax due or the information needed to calculate it'.

12. Article 22(5) requires every taxable person to pay the net amount of VAT (that is to say, output tax minus input tax) when submitting the regular return for each tax period.

13. Mention may be made also of Directive 98/6/EC, (4) whose purpose is to stipulate indication of the selling price and the price per unit of measurement of products offered by traders to consumers in order to improve consumer information and to facilitate comparison of prices (Article 1). Article 2 defines (a) 'selling price' as the final price per unit or given quantity of a product, including VAT and all other taxes, and (e) 'consumer' as any natural person who buys a product for purposes that do not fall within the sphere of his commercial or professional activity. Article 3(1) requires the selling price to be indicated for all products offered by traders to consumers.

Relevant United Kingdom provisions

14. Under the Value Added Tax Regulations 1995 ('the VAT Regulations'), it is only if the customer is another taxable person (5) that VAT-registered traders *must* provide a VAT invoice for

taxable supplies. All VAT-registered traders *may* nevertheless issue a VAT invoice to all customers if they so wish. A full VAT invoice must contain a number of particulars, including the customer's name and address. (6) A 'less detailed VAT invoice' may be issued for VAT-inclusive amounts of up to GBP 100; such invoices need not indicate the customer's particulars but must show, for each applicable rate, 'the gross amount payable including VAT, and the VAT rate applicable'. (7)

15. The Commissioners for Her Majesty's Revenue & Customs ('HMRC') have issued a VAT Guide (Notice 700) for taxable persons. Paragraphs 17.5 and 17.6 concern rounding, and read as follows:

'17.5 Calculation of VAT on invoices – rounding of amounts

Note: The concession in this paragraph to round down amounts of VAT is designed for invoice traders and applies only where the VAT charged to customers and the VAT paid to Customs and Excise is the same. As a general rule, the concession to round down is not appropriate to retailers, who should see paragraph 17.6.

You may round down the total VAT payable on all goods and services shown on a VAT invoice to a whole penny. You can ignore any fraction of a penny.

17.5.1 Calculation based on lines of goods or services

If you wish to work out the VAT separately for a line of goods or services which are included with other goods or services in the same invoice, you should calculate the separate amounts of VAT either by rounding:

- down to the nearest 0.1p – for example, 86.76p would be rounded down to 86.7p; or
- to the nearest 1p or 0.5p – for example, 86.76p would be rounded up to 87p.

Whatever you decide, you must be consistent.

The final total amount of VAT payable may be rounded down to the nearest whole penny.

17.6 Calculation of VAT at retailers

Most retailers account for VAT using a retail scheme. If that is the way you account for VAT, this paragraph does not affect you.

Retailers are increasingly using sophisticated till technology to identify the VAT due on each transaction and issue an invoice. If you do not use a retail scheme but instead calculate VAT at line level [(8)] or invoice level you must not round the VAT figure down. However, you may round (up and down) each VAT calculation.'

16. That notice does not define 'invoice traders'. However, section 12 of HMRC Manual V1-24A, 'Trader's records' (which contains guidance for HMRC staff but is freely available to the public), provides indications of what is understood by the distinction between invoice traders and retailers.

17. Section 12.1 of that manual states that, when interpreting paragraph 17.5 of Notice 700, 'it is important to note that it is in the context of rules for invoice traders where the rounding is tax neutral. This is because it will normally impact on both the output tax of the supplier and the input tax of the customer. This means that when an invoice trader calculates the VAT on net values, the

amount charged and payable by the customer may be rounded down.'

18. Section 12.2 of the manual states, inter alia:

'Sophisticated accounting packages allow retailers the possibility of identifying VAT at line level and/or providing VAT invoices. ...

As a general rule the concession to round down is not appropriate for retailers. This is because the effect of rounding down the VAT charged to final consumers is not to reduce the VAT payable (which is the VAT fraction x the consideration) but only to reduce the tax accounted to HMRC.

Most retailers continue to account for VAT using a retail scheme. The problem of rounding only arises for retailers whose accounting systems allow them to identify tax at line level and to issue invoices. ...

...

If a retailer genuinely sets prices on a VAT-exclusive basis – so that the VAT charged to the customer and the VAT accounted to HMRC are the same – the existing rounding concession may be appropriate. In considering such a system, you should examine how prices are actually set. If the retailer genuinely arrives at a tax inclusive selling price by starting with a net value expressed in whole pennies, then the existing concession may be appropriate. ...'

19. According to the order for reference, most large retailers in the United Kingdom have an individual agreement with HMRC as to how they calculate their VAT (a 'retail scheme' as referred to in the VAT Guide and Manual V1-24A). In such agreements, HMRC are prepared to allow arithmetic rounding (up or down to the nearest penny) at either line or basket level. However, section 12.3 of Manual V1-24A states that, 'if a trader proposes an alternative rounding method then it should be considered and allowed if it produces an acceptable and reasonable result'.

Facts, procedure and questions referred

20. J D Wetherspoon PLC ('J D Wetherspoon') operates over 670 pubs throughout the United Kingdom. The majority of its sales are retail sales of food and beverages to final consumers.

21. It displays a VAT-inclusive selling price of its retail products to its customers. It does not issue full VAT invoices to customers, but provides receipts which qualify as less detailed VAT invoices for food and hot drinks, and for other drinks when requested by the customer.

22. Until 2004, J D Wetherspoon accounted for VAT by identifying the VAT liability of each sale and calculating the VAT payable at basket level. It calculated the VAT payable on each standard-rated transaction at 7/47ths (9) of the total amount due and rounded up or down arithmetically to the nearest penny. Those amounts of VAT were totalled at the end of the day for each pub and became the VAT payable to HMRC on the periodic VAT returns.

23. Since then, J D Wetherspoon has calculated and rounded down the VAT to the nearest tenth of a penny at line level for each separately identified product. It then aggregates those amounts of VAT and rounds down the total to the nearest penny at basket level.

24. HMRC refused to allow J D Wetherspoon to round down the VAT payable on each transaction. J D Wetherspoon appealed against that refusal and against two notices of assessment issued pursuant to it.

25. The VAT and Duties Tribunal, hearing the appeal, observes that neither Community nor national legislation specifies the method of rounding where application of the normal rate produces a VAT amount which includes a fraction of the lowest unit of currency. The options are to round down in each case, or to round arithmetically. Nor does any legislation specify at what point rounding should take place. Where the same customer buys a number of items of goods at the same time, it is possible to round:

- (a) at 'item level', for each item of each product in each transaction;
- (b) at 'line level', for each product, where more than one item of that product is purchased in the same transaction;
- (c) at 'supply level', for each supply, where a single transaction comprises a number of separate supplies for VAT purposes;
- (d) at 'basket level', for the total transaction with each customer;
- (e) at 'VAT accounting period' level, by adding together all the amounts of VAT received for standard-rated goods sold during the period and then rounding the total; or
- (f) at some other level, such as that of the daily gross taking for each outlet or for all the trader's outlets.

26. The Tribunal therefore seeks a preliminary ruling on the following questions:

'(1) Is the rounding off of VAT amounts governed solely by national law, or instead governed by Community law? In particular do the first and second paragraphs of Article 2 of the First Directive and Articles 11A(l)(a) and/or 12(3)(a) and/or Article 22(3)(b), (version as at 1 January 2004) of the Sixth Directive confirm that rounding off is a matter of Community law?

(2) In particular:

(i) Does Community law prevent the application of a national rule or practice of the national taxing authority which requires rounding up of any given VAT amount whenever the fraction of the smallest unit of currency is concerned is at or above 0.50 (for example, 0.5 pence is required to be rounded up to the nearest whole pence)?

(ii) Does Community law require that the taxpayers be allowed to round down any VAT amount which includes a fraction of the smallest unit of currency available?

(3) In a VAT inclusive sale at which level does Community law require rounding off to be applied for the purpose of calculating the VAT due: at the level of each individual item, each line of goods, each supply (if more than one supply is included in the same basket), each transaction/basket total, or each VAT accounting period or some other level?

(4) Is the answer to any of the questions affected by the Community law principles of equal treatment and fiscal neutrality, particularly by reference to the existence, in the United Kingdom, of a concession by the relevant taxing authorities allowing only certain traders to round down the VAT amounts to be accounted for?’

27. Written observations have been submitted by J D Wetherspoon, by the United Kingdom, Greek and Netherlands Governments and by the Commission. J D Wetherspoon, the United Kingdom Government and the Commission presented oral argument at the hearing.

Assessment

The first question

28. The first question – whether rounding of VAT amounts is governed by national or Community law – has, essentially, been answered by the Court in *Koninklijke Ahold*.

29. At paragraphs 24 to 33 of that judgment, the Court found that the VAT Directives contain no explicit rule concerning rounding of amounts of VAT; that Articles 11A(1)(a) and 22(3)(b) of the Sixth Directive, in particular, did not lay down any express rule or specific method of rounding; and that, consequently, in the absence of any Community legislation, it is for the legal systems of the Member States to determine such rules or methods. It also specified, however, that when Member States establish or accept a particular method of rounding, they are obliged to observe the principles governing the common system of VAT, such as those of fiscal neutrality and proportionality. (10)

30. In the present case, in addition to Articles 11A(1)(a) and 22(3)(b) of the Sixth Directive, the referring tribunal mentions the first two paragraphs of Article 2 of the First Directive, which set out the principles of the VAT system, in particular that of a tax exactly proportional to price, and Article 12(3)(a) of the Sixth Directive, which requires VAT rates to be fixed as a percentage of the taxable amount. It is clear that neither of those provisions lays down any specific rule or method as to the rounding of VAT amounts, but both express the principle of proportionality which the Member States must observe, as the Court ruled in *Koninklijke Ahold*.

The second question

31. The VAT and Duties Tribunal asks essentially whether, where VAT amounts include a fraction of the smallest unit of currency available, Community law either (i) precludes any rule or practice requiring taxable persons to apply arithmetic rounding up or down, or (ii) requires them to be allowed to round down systematically.

32. At paragraphs 34 to 43 of its judgment in *Koninklijke Ahold*, the Court reached the view that Community law, in particular the provisions of the First and Sixth Directives and the principles of fiscal neutrality and proportionality, contains no specific obligation for Member States to permit taxable persons to round the amount of VAT down per item.

33. The Court noted, in particular, that fiscal neutrality does not require any particular method of rounding, as long as the amount of VAT collected by the tax authority corresponds exactly to the amount shown on the invoice and paid by the consumer to the taxable person, (11) and that, while the principle of proportionality requires any rounded amount to correspond as closely as possible

to the amount determined by the applicable rate, that must be reconciled with the practical need for effective operation of a system based on taxable persons' returns. (12) It was clear that more than one method – and in particular arithmetic rounding – could meet those requirements. (13)

34. The ruling that Member States are not required to permit taxable persons to round the amount of VAT down per item answers to a large extent part (ii) of the national tribunal's second question in the present case, and an answer to part (i) of that question can be derived from the observation to the effect that the arithmetic method is consistent with the requirements of Community law. It is true that the second question in *Koninklijke Ahold* concerned only rounding at item level, whereas in the present case it is not limited to that level. However, the Court's reasoning is in no way specific to the level at which rounding is applied.

The third question

35. The required level of rounding – if any – is the subject-matter of the third question referred in the present case.

36. The question is asked with specific reference to sales at VAT-inclusive prices. Such prices are fixed by the trader at a selling price (which, in order to be payable, cannot include a fraction of the smallest available currency unit) of which a proportion (in the United Kingdom, 40/47ths) is the VAT-exclusive price and a proportion (in the United Kingdom, 7/47ths) is the amount of VAT. In many cases (in the United Kingdom, whenever the price is not a multiple of GBP 0.47), those proportions will involve a fraction of the smallest available currency unit. In the case of traders charging such prices, does Community law require that rounding take place at any particular level?

37. As I pointed out in my Opinion in *Koninklijke Ahold*, (14) rounding will always produce a small distortion and, the lower the level at which it takes place (considering rounding per item to be the lowest level and rounding per VAT return to be the highest), the greater the likelihood that the aggregate distortion will be significant. I also pointed out (15) that rounding always up or always down will produce greater distortion, whereas arithmetic rounding will tend to reduce it (with amounts rounded up cancelling out others which are rounded down), and that other refinements can mitigate distortion even further.

38. The type of distortion involved is a discrepancy between the exact proportion of the retail price which constitutes VAT and the amount of VAT which the trader declares and hands over to the tax authorities. Such discrepancies offend, by definition, against the requirement of exact proportionality. They involve either, in the case of rounding up, payment by the trader to the tax authority of a fraction of his profit in addition to the amount strictly due or, in the case of rounding down, retention by the trader of a fraction of the VAT strictly due – thus also offending against the principle that VAT should be neutral vis-à-vis taxable persons.

39. It is clear that no provision of the Sixth, or any other, VAT Directive lays down any specific requirement as to the level at which rounding should take place. However, the principles of fiscal neutrality and proportionality (as those principles are to be understood in the context of VAT) require that distortion should be kept to a minimum. That can be achieved, on the one hand, by using a method of rounding which does not systematically entail distortion in only one direction but allows distortions to cancel each other out. On the other hand, in the specific context of the referring tribunal's third question, it can be achieved by applying rounding at the level which entails the least danger of cumulative distortion because it involves the smallest number of individual rounding operations.

40. The highest possible level is that of the periodic VAT return. (16) In so far as traders are selling to final consumers and there is no requirement to issue an invoice indicating a specific amount of VAT, that level of rounding would seem to pose no practical problem. As I suggested in *Koninklijke Ahold*, (17) a till receipt of the kind commonly issued in such circumstances need not state the exact amount of VAT contained in the final price but may indicate simply the applicable rate; and, even if a rounded amount is given, it need not be binding as between the trader and the tax authority – by virtue of Article 18(1)(a) of the Sixth Directive, a mere till receipt which is neither a full nor a less detailed VAT invoice cannot be used in order to exercise the right to deduct. In the case of a less detailed VAT invoice (which can be used in order to deduct), I note that neither Article 22(9)(d) of the Sixth Directive nor Regulation 16(1) of the VAT Regulations requires any specific amount of VAT to be stated – only ‘the information needed to calculate it’ or ‘the VAT rate applicable’. (18)

41. Does the situation change where a trader, selling at round VAT-inclusive prices, issues a full VAT invoice? (19)

42. Where such an invoice is issued, it must state the taxable amount and the VAT amount payable. Clearly the two amounts must together come to a total capable of being paid to the supplier, which therefore cannot include a fraction of the smallest currency unit. However, I can find no specific requirement in the Sixth Directive that each separate amount must be a round multiple of that smallest unit. Nor, in fact, does there seem to be any imperative reason why rounding could not be postponed until the stage of the periodic VAT return. The supplier could aggregate all fractional amounts before rounding in his return – as could the customer, if he is a taxable person. And if the customer is not a taxable person, there is no requirement for him to account for VAT in rounded amounts – he merely has to be able to pay the VAT-inclusive price in such a form.

43. It is true that national law or administrative regulation may require all amounts on VAT invoices to be stated in multiples of the smallest currency unit, (20) or may authorise traders to round to such units for ease of accounting and administration. Where such rounding is required or authorised, the amount stated ‘crystallises’ an actual amount of VAT, paid by the customer to the supplier and to be accounted for by the supplier to the tax authority. In such a case, the level of rounding which causes the least distortion will be that of the invoice for the whole transaction, which may of course comprise a number of separate items or supplies (this is the ‘basket level’ referred to by the national tribunal).

44. Consequently, while the Community VAT legislation does not require rounding at a specific level and thus allows Member States a degree of latitude, that latitude must be exercised in accordance with the principles of proportionality and neutrality, which are best served by rounding at the latest stage which is consistent with the practical requirements of payment and accounting.

The fourth question

45. The VAT and Duties Tribunal asks, essentially, whether the fact that the United Kingdom allows invoice traders to round down systematically has any implications for the practice which it must follow vis-à-vis retail traders (such as J D Wetherspoon), particularly in the light of the Community-law principles of equal treatment and fiscal neutrality.

46. The differences, on the one hand, between supplies to taxable persons and supplies to final consumers and, on the other hand, between VAT-exclusive and VAT-inclusive prices are relevant

to the consideration of the method and level of rounding appropriate in retail trade. I therefore considered the implications of those differences in my Opinion in *Koninklijke Ahold*, in particular at points 56 to 62, to which I refer.

47. In the light of those considerations, and of those set out in points 37 to 42 in the same Opinion, I take the view that it is not incompatible with the principles of equal treatment and fiscal neutrality (a) to allow traders who fix VAT-exclusive prices in round figures, to which VAT is added, and who supply taxable persons with a right to deduct, to round the amount of VAT down systematically while at the same time (b) requiring traders who fix VAT-inclusive prices in round figures, from which the amount of embedded VAT must be calculated, and who supply final consumers, to round the amount of VAT arithmetically in all cases.

48. In case (a), by virtue of the deduction mechanism, rounding (whether up, down or arithmetic) has no effect on the tax burden of either supplier or customer, nor does it affect the total amount of tax ultimately collected by the treasury. In case (b), systematic rounding up or down will lead to the trader being liable for, and to the treasury collecting, respectively more or less VAT than the exact proportion of the price which should result from application of the correct rate. That discrepancy is considerably reduced by arithmetic rounding (particularly rounding to even), thus ensuring greater equality of treatment as between cases (a) and (b) and greater fiscal neutrality in case (b).

49. J D Wetherspoon submits, however, that to accept systematic rounding down for some traders whilst imposing arithmetic rounding for others leads to a distortion of competition as between the two classes of traders – on a basis which is entirely arbitrary, as the classes of invoice traders and retail traders are nowhere defined. It gives the example of two traders selling a can of paint at GBP 4.94, including VAT. For the invoice trader, that will be made up of a net price of GBP 4.21, plus VAT of GBP 0.73675, rounded down to GBP 0.73. The retail trader, however, will have to round the amount of VAT (which, at 7/47ths of the VAT-inclusive price, I calculate as GBP 0.73574) arithmetically to GBP 0.74 and will receive a net price of only GBP 4.20. That, J D Wetherspoon contends, is contrary to the Court's case-law to the effect that similar supplies, in competition with each other, must not be treated differently for VAT purposes, regardless of whether the distortion of competition is substantial or not. (21)

50. First of all in that regard, it is a matter solely for the national tribunal to determine whether the classification of traders as invoice traders or retail traders is in any way uncertain or arbitrary. It is also for the national tribunal to determine whether, in fact, food and drinks similar to and, in competition with, those supplied by J D Wetherspoon are also supplied by invoice traders authorised to round down the amount of VAT where J D Wetherspoon is not allowed to do so. (22)

51. On the assumption that the latter point can be established in fact, the question arises whether the difference in treatment in fact penalises one type of trader and not the other, and whether it results from the method of rounding or from the method of price construction (that is to say, whether the price in round figures from which one starts is VAT-exclusive or VAT-inclusive). Again, these are questions primarily for the national tribunal, but the following considerations may assist.

52. The rounding concession which applies in the United Kingdom to invoice traders, and the method which J D Wetherspoon seeks to use, is based on rounding down at basket level to the smallest unit of currency, after rounding down at line level to 1/10th of that unit. It is helpful, therefore, to compare the treatment not of single items (for example, the single can of paint cited by J D Wetherspoon) but of baskets of the same item (for example, 2, 5, 10 or more cans of paint).

53. If, in J D Wetherspoon's example, the trader sells more than a single can of paint, the

picture changes. The invoice trader's selling price, being based on a higher VAT-exclusive price, exceeds that of the retail trader as soon as even the second can is sold together with the first, and the differential increases with the number of cans. Beyond 10 cans sold together, the amount of VAT in the invoice trader's price is higher than the amount in that of the retail trader, and again the differential increases with the number of cans.

54. It would be tedious to set out calculations for all possible different numbers of cans. However, based on J D Wetherspoon's figures, an invoice trader rounding down systematically would sell 20 cans of paint for GBP 98.93, including VAT of GBP 14.73, whereas a retail trader rounding arithmetically would sell them for GBP 98.80, including VAT of GBP 14.71 (indeed, in this example, the retail trader's figures would be the same even if he were allowed to round down – as will be the case whenever arithmetic rounding leads downwards). The VAT-exclusive price to the trade customer would thus be GBP 84.20 in the case of the invoice trader, and GBP 84.09 in the case of the retail trader.

55. Consequently, the retail trader's VAT-inclusive price could be more attractive to final consumers, and his VAT-exclusive price could be more attractive to taxable persons since each price is lower than its counterpart in the invoice trader's price structure. Within the normal range of consumer expenditure, however, the differences are sufficiently slight to be perhaps unlikely to affect choice in themselves – considerations such as proximity or the availability of free delivery may have equal or greater weight. Retail traders may thus have scope to adjust their prices so as to offset any (equally slight) disadvantage in terms of net revenue without placing themselves at an overall competitive disadvantage.

56. It thus seems that the effects of the difference in treatment between invoice traders and retail traders in the United Kingdom (a) are not necessarily such as to operate systematically to the detriment of retail traders and (b) may derive more from the difference between the use of VAT-exclusive and VAT-inclusive prices, each in round figures, as the basis for the calculation than from the method of rounding applied.

57. In the latter regard, it must be remembered that Directive 98/6 requires a VAT-inclusive selling price – which is the only price that matters for the final consumer – to be indicated for all products offered by traders to natural persons buying them for purposes that do not fall within the sphere of their commercial or professional activity, whereas in trade between taxable persons entitled to deduct input tax the only price that matters is the VAT-exclusive price. There is therefore no apparent infringement of fiscal neutrality or equality of treatment in or deriving from the fact that different categories of trader construct their prices by different methods.

58. Provided that the different methods of rounding are indeed applied on the basis of a distinction between the ways in which traders fix their prices, therefore, it seems to me that HMRC's rounding-down concession for invoice traders has no material implications for the approach to rounding for retail traders such as J D Wetherspoon.

59. In that regard, it is irrelevant that J D Wetherspoon, fixing VAT-inclusive prices, would have to account for significantly less VAT by systematic rounding down than by systematic arithmetic rounding. The relevant comparison is between invoice traders and retail traders, not between different rounding methods applied by retail traders. However, it would clearly be contrary to the requirement of equal treatment if, of a group of traders making similar and competing supplies based on round VAT-inclusive prices, some were allowed to round the VAT amount down systematically and others not. And, in that case, the traders allowed to round down would be retaining a fraction of the exact amount of VAT due, which would be contrary to the principle of fiscal neutrality.

Conclusion

60. In the light of all the above considerations, I suggest that the Court should give the following answers to the questions raised by the VAT and Duties Tribunal, London:

- (1) In the absence of specific Community legislation, it is for Member States to decide on the rules and methods of rounding amounts of VAT, provided that in doing so they observe the principles underpinning the common system of VAT, in particular those of fiscal neutrality and proportionality.
- (2) Community law neither precludes Member States from requiring taxable persons to round the amount of VAT arithmetically in all cases nor requires them to permit such persons to round the amount down in all cases.
- (3) Where sales are made at VAT-inclusive unit prices in round figures and the amount of VAT includes a fraction of the smallest available unit of currency, Community law does not require that amount to be rounded to a whole unit before the stage at which it must be expressed as a figure which does not include such a fraction, in particular in order to render it capable of payment as an independent sum.
- (4) If traders making supplies based on VAT-exclusive unit prices in round figures, to which VAT must be added, are allowed to round the amount of VAT downwards on each invoice, the principles of equal treatment and fiscal neutrality do not preclude requiring traders who make supplies based on VAT-inclusive unit prices in round figures, from which the VAT component must be calculated, to round the amount of VAT arithmetically.

1 – Original language: English.

2 – Case C-484/06 [2008] ECR I-0000.

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 I, p. 14); 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, amended on numerous occasions). With effect from 1 January 2007, both directives were repealed 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), whose aim is to present all the applicable Community VAT provisions clearly and rationally in a recast structure and wording without, in principle, bringing about material changes in the existing legislation.

4 – Of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ 1998 L 80, p. 27).

5 – And, where the supplier is a retail trader, only if the customer requests an invoice.

6 – These particulars, set out in Regulation 14(1), are essentially the same as those required by Article 22(3)(b) of the Sixth Directive.

7 – Regulation 16(1).

8 – For an explanation of the terms 'line', 'basket' etc. level, see point 25 below.

9 – The standard rate of VAT in the United Kingdom is 17.5%, or 7/40ths, of the net (VAT-

exclusive) price. The amount of VAT in a retail (VAT-inclusive) price is therefore 7/47ths.

10 – It should be borne in mind that, in this context, ‘fiscal neutrality’ refers to the requirement that VAT should be neutral in its effect both on and as between taxable persons, and the ‘principle of proportionality’ has the specific meaning of a requirement that the amount of tax be exactly proportional to the prices of goods and services (see *Koninklijke Ahold*, paragraphs 36 and 38).

11 – Paragraph 37 of the judgment.

12 – Paragraph 39.

13 – Paragraphs 40 and 41, referring to point 47 of my Opinion in that case. At points 47 and 48, I discussed arithmetic rounding, indicating in footnote 29 that simple arithmetic rounding entails a slight upward bias (deftly airbrushed out of the calculations proposed by the United Kingdom Government in its observations in the present case) which could be mitigated by ‘rounding to even’.

14 – In particular at points 37 to 42 and 49 to 51.

15 – At points 42, 47 and 48, and footnote 29.

16 – See points 49 to 51 of my Opinion in *Koninklijke Ahold*.

17 – See, in particular, points 34 and 55 of my Opinion.

18 – See points 11 and 14 above.

19 – It may be recalled that full VAT invoices must contain a considerable amount of information (including the customer’s full name and address), which may render the practice less attractive to retailers with high-volume, low-value sales.

20 – Regulation 14(1) of the VAT Regulations requires the amount of tax to be expressed in sterling, just as Article 22(3)(b) of the Sixth Directive requires it to be expressed in the national currency of the Member State concerned. Both provisions are silent on the question whether round units must be used.

21 – It cites, in particular, Case C-363/05 *J P Morgan Fleming Claverhouse Investment Trust* [2007] ECR I-5517, paragraphs 46 and 47 and the case-law cited there, together with Case C-141/00 *Kügler* [2002] ECR I-6833, paragraphs 55 to 58, and Case C-45/01 *Christoph-Dornier-Stiftung* [2003] ECR I-12911, paragraphs 69 to 74.

22 – At the hearing, J D Wetherspoon suggested that such a situation might exist as between itself and catering firms in the context of receptions and similar events which may be organised for both taxable persons and private individuals. Such firms, J D Wetherspoon asserts, are allowed to round down whereas it is required to round arithmetically.