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OPINION OF ADVOCATE GENERAL

WAHL

delivered on 14 June 2016 (1)

Case C?432/15

Odvolací finan?ní ?editelství

v

Pavlína Baštová

(Request for a preliminary ruling from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic))

?Taxation — VAT — Directive 2006/112/EC — Definition of ‘supply of services effected for consideration’ — Horse racing — Money prizes — Deduction of input VAT — Operation of racing stables — Use of sporting facilities’

1.

Provocatively, George Orwell wrote that serious sport is bound up with ‘disregard of all the rules’. (2) By contrast, taxation of economic activities is one of the most regulated areas, not only within the Union. Therefore, at least when filing their tax returns and making the related payments to the State, professional sportsmen are required to comply with all the rules applicable to them.

2.

The present proceedings raise a number of issues on the applicability of the rules on value added tax (‘VAT’) to economic activities which consist of, or are related to, sports activities such as horseracing, or which involve the use of sporting facilities.

I – Legal framework

A – EU law

3.

Article 2 of the VAT Directive (3) provides:

‘1. The following transactions shall be subject to VAT:

…

(c)

the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

…’

4.

Article 24 of the VAT Directive provides:

‘1. “Supply of services” shall mean any transaction which does not constitute a supply of goods.

…’

5.

Article 98 of the VAT Directive provides:

‘1. Member States may apply either one or two reduced rates.

2. The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.

…’

6.

Annex III to the VAT Directive provides a list of supplies of goods and services to which the reduced rates referred to in Article 98 may be applied. Point 14 of that annex comprises the ‘use of sporting facilities’.

B – National law

7.

Paragraph 2(1) of the zákon ?. 235/2004 Sb. o dani z p?idané hodnoty (Law No 235/2004 on value added tax, ‘the Law on VAT’), in the version applicable to the tax period at issue, provides that transactions subject to tax include ‘the supply of services for consideration by a taxable person in the course of economic activity with the place of the transaction in the Czech Republic’.

8.

Paragraph 4(1)(a) of the Law on VAT provides that ‘consideration’ means ‘a sum of money or means of payment taking the place of money or the value of a non-monetary supply provided’.

9.

Paragraph 5(2) of the Law on VAT provides that economic activity means ‘the systematic activity of producers, traders and persons supplying services, including mining and agricultural activities and systematic activities carried on in accordance with special provisions of the law … Also regarded as economic activity is the exploitation of tangible or intangible property for the purpose of obtaining income, in so far as that property is exploited systematically …’

10.

Paragraph 14(1) of the Law on VAT states that the supply of services means ‘all activities which are not a supply of goods or a transfer of immovable property. The supply of services also means (a) the transfer of rights, (b) the provision of the right to exploit a thing or right or other asset

exploitable as property, (c) the creation or extinguishment of a real servitude, (d) the acceptance of an obligation to refrain from certain conduct or tolerate certain conduct or a certain situation'.

11.

According to Paragraph 72(1) of the Law on VAT, a taxpayer has the right to deduct tax in so far as he uses the taxable supplies acquired for carrying out his economic activity.

12.

Paragraph 47(4) provides that in the case of services 'the standard rate of tax applies unless this law provides otherwise. In the case of the services mentioned in Annex 2, the reduced rate of tax applies.'

13.

Annex 2 to the Law on VAT includes inter alia the service of 'the use of covered and uncovered sports facilities for sports activities'.

II – Facts, procedure and the questions referred

14.

Ms Pavlína Baštová is registered as a taxable person for VAT. She is in the business, inter alia, of breeding and training racehorses. The stables used for this purpose were occupied partly by her own horses and partly by horses belonging to others entrusted to her to be prepared for races. In addition to racehorses, she also had two horses which she used for agrotourism and training of young horses, as well as breeding mares and foals.

15.

Part of Ms Baštová's income came from prizes won by her horses and the trainer's shares of prizes won by horses belonging to others. Another part came from payments for preparing horses belonging to others for the races.

16.

In the tax declaration for the fourth quarter of 2010, Ms Baštová claimed the right to full deduction of VAT on the taxable supplies acquired relating to (a) preparation of horses for races and participation in races, including expenditure on entrance fees, declaration fees and fees for assistance during races, (b) procurement of consumables for horses, their feed and equipment for riding, (c) veterinary services and medicines for the horses, (d) consumption of electricity in the stables, (e) consumption of fuel oil for transport, (f) procurement of rotor rakes for the production of hay and forage and of tractor equipment, (g) consultancy services in connection with the running of the stables. The supplies acquired concerned her horses and horses belonging to others.

17.

In the same tax declaration Ms Baštová also declared output VAT at the reduced rate of 10% on the service 'operation of racing stables' which she supplied to the other horse owners.

18.

The Finan?ní ú?ad v Ostrov? (Tax Office, Ostrov) did not accept the claim for full deduction, nor did it agree with the reduced rate of VAT on the service 'operation of racing stables'. Ms Baštová

brought an appeal against that decision before the Finan?ní ?editelství v Plzni (Tax Directorate, Plze?) which upheld the appeal in part. However it refused the claim for deduction of input VAT for the amount corresponding to the participation of Ms Baštová's own horses in races since it considered that the running of her own horses in races did not constitute taxable transactions. In addition, the Finan?ní ?editelství v Plzni also did not accept the application of the reduced rate of VAT on the service 'operation of racing stables'.

19.

Ms Baštová challenged the decision at issue by an action before the Krajský soud v Plzni (Regional Court, Plze?), which agreed with her and annulled the decision, remitting the case to the Odvolací finan?ní ?editelství (Appellate Tax Directorate). The Odvolací finan?ní ?editelství brought an appeal against that judgment on a point of law before the Nejvyšší správní soud (Supreme Administrative Court).

20.

Entertaining doubts as to the interpretation of the provisions of the VAT Directive, the referring court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1a)

Is the supply of a horse by its owner (who is a taxable person) to the organiser of a race for the purpose of the horse's running in a race a supply of services for consideration within the meaning of Article 2(1)(c) of [the VAT Directive] and thus a transaction subject to VAT?

(1b)

If the answer is in the affirmative, must the prize money obtained in the race (which not every horse taking part in the race obtains, however), or the acquisition of the service consisting in the opportunity for the horse to run in the race which the organiser of the race provides to the owner of the horse, or some other consideration, be regarded as the consideration?

(1c)

If the answer is in the negative, is that circumstance in itself a ground for reducing the deduction of input VAT on the taxable supplies acquired and used for the preparation of the breeder/trainer's own horses for races, or must the running of a horse in a race be regarded as a component of the economic activity of a person who operates in the field of breeding and training his own and other owners' racehorses, and the expense of breeding his own horses and running them in races be included in the overheads associated with that person's economic activity? If the answer to that part of the question is in the affirmative, must prize money be included in the taxable amount and output VAT accounted for, or is this income which does not affect the taxable amount for VAT at all?

(2a)

If for VAT purposes it is necessary to regard several part services as a single transaction, what are the criteria for determining their mutual relationship, that is, for determining whether they are supplies of equal status with each other or supplies in the relationship of a principal and an ancillary service? Does any hierarchy exist between those criteria as regards their ranking and weight?

(2b)

Must Article 98 of [the VAT Directive] in conjunction with Annex III to that directive be interpreted as precluding the classification of a service under the reduced rate if it is composed of two part supplies which must be regarded for VAT purposes as a single supply and those supplies are of equal status with each other, and one of them may not in itself be classified in any of the categories set out in Annex III to [the VAT Directive]?

(2c)

If the answer to Question 2b is in the affirmative, does the combination of the part service of the right to use sports facilities and the part service of a trainer of racehorses, in circumstances such as those of the present proceedings, preclude the classification of that service as a whole under the reduced rate of VAT mentioned in point 14 of Annex III to [the VAT Directive]?

(2d)

If the application of the reduced rate of tax is not excluded on the basis of the answer to Question 2c, what influence on the classification under the relevant rate of VAT does the fact have that the taxable person provides, in addition to the service of the use of sports facilities and the service of a trainer, also stabling, feeding and other care of a horse? Must all those part supplies be regarded for VAT purposes as a single whole sharing the same tax treatment?'

21.

Written observations in the present proceedings have been submitted by the Czech Government and the Commission.

III – Analysis

A – First set of questions

22.

By its first set of questions, the referring court essentially asks the Court to clarify whether (i) the owner of racing stables may deduct the input VAT on transactions carried out in order to supply her own horses to a race organiser for the purposes of those horses running in a race, and (ii) the prize money obtained in a race should be subject to VAT.

23.

The Czech Government takes the view that the mere supply of a horse to a horse race organiser cannot be considered a supply of services for consideration, since consideration is lacking. In particular, this applies to the award of the money prizes at stake in the races, since those prizes are awarded to certain horses only. Therefore, the owner of the horse has no right to deduct input VAT for those purposes. By contrast, the Commission is of the view that both the entering of horses for a race, against payment of an entry fee and, where applicable, the award of a money prize for an outstanding performance by a horse in a race constitute taxable transactions, with the obvious consequences for the deductibility of input VAT.

24.

In order to provide a useful answer to the referring court, I shall start my analysis by addressing

the issue specifically raised by question 1c.

25.

As follows from the order for reference, the referring court considers that the supply of race horses to race organisers by Ms Baštová is an integral part of her business. Regardless of the award of the money prizes at stake in the races, the very participation of her horses in those races (and even more so their possible success) is likely to enhance the fame and image of Ms Baštová. That has positive repercussions on the price she can charge for the sale of her horses and for the training of horses belonging to others.

26.

That is, to my mind, a crucial point. As the Court has consistently stated, it is clear from the provisions, scheme and purpose of the VAT Directive that any activity of an economic nature is, in principle, taxable. (4) The concept of ‘economic activity’ is defined broadly: according to Article 9(1) of the VAT Directive that concept includes, in particular, the ‘exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis’. That is consistent with recital 5 of the VAT Directive, according to which VAT is to be levied ‘in as general a manner as possible’.

27.

In the light of that case-law, the activity of a horse owner who, like Ms Baštová, operates racing stables and supplies her horses to race organisers with a genuine intent of obtaining economic benefits connected to her activities as horse trainer and breeder, as well as additional income from the prizes at stake, constitutes an economic activity under the VAT rules.

28.

It follows from the above that the owner of a racing stable, such as Ms Baštová, may lawfully deduct input VAT on the goods and services acquired for the preparation of her own horses for races.

29.

Clearly, my conclusion would be different were the supply of horses to race organisers not made in the context of a business activity. That may be the case, for example, where a horse owner participates to events only in pursuit of a personal hobby or merely as a means of claiming deduction of input VAT in relation to the upkeep of horses used only for private uses.

30.

In that regard, it may be useful to call to mind that, according to settled case-law, an activity is to be regarded as economic only if it is carried out for the purpose of obtaining income on a continuing basis (5) or, in other words, in return for remuneration. (6) However, income is not obtainable if an activity is carried out exclusively free of charge, (7) or without a real prospect of receiving some kind of remuneration in return. Therefore, an activity carried out, even by a taxable person, only as a hobby, for leisure, or without any prospect of receiving a direct or indirect economic benefit therefrom does not constitute part of that person’s economic activity. That has, in turn, obvious consequences on the deductibility (or non-deductibility) of the input VAT. The VAT Directive, in fact, also includes provisions regulating the situation of goods forming part of the assets of a business that are used privately by the taxable person. (8)

31.

Having reached that conclusion, one additional issue must be addressed: whether the prize money obtained in a race should be subject to VAT. The answer to this question follows, in my view, from the answer proposed to the first part of question 1c.

32.

At the outset, I should point out that participation in competitions and other sporting events may often involve the provision of a number of separate, but closely related, services. (9) This means that, for the purposes of the VAT rules, there may be more than one transaction taking place between a participant (such as the owner of a horse entered for a race) and an event organiser. Importantly, depending on the specific circumstances, both the horse owner and the race organiser may be the supplier of one or more services to the other. In other words, both of them may be, at the same time, on the receiving side for some transactions and on the supplying side for others.

33.

Clearly, what constitutes a taxable transaction in any given case cannot be defined in abstract terms but depends on the specific characteristics of the agreement concluded between a horse owner and a race organiser in a given situation. (10) Broadly speaking, I can envisage at least three different sets of circumstances.

34.

To begin with, there may be situations in which a horse owner wishing to enter his horse for a race agrees to pay a fee to the race organiser. This is — according to the referring court — generally the case for the races in which Ms Baštová participates with her horses. To my mind, as in Town & County Factors, this transaction involves a ‘reciprocal performance’ within the meaning of the Court’s case-law. The fee paid by the horse owner constitutes consideration for the services that the race organiser supplies to her (organisation of the event, logistics and related services). (11)

35.

In addition, there may be situations where a horse owner — independently of the performance at the race — is paid by the race organiser for that participation. That may happen, for example, where a horse is particularly famous and its mere participation in a race is likely to increase the commercial value and prestige of the event. In that situation, the payment made by the race organiser to the horse owner constitutes consideration for the service rendered by the latter to the former in agreeing to let his horse participate in the event.

36.

Finally, as seems to happen in most races, the race organiser might award a number of prizes to the horses producing the best performance. To my mind that situation too gives rise to a taxable transaction for the purposes of VAT: the prize received by the horse owner constitutes consideration for the outstanding performance of the horse in the race, which has enriched the event by making it more interesting and valuable. The horse owner, by supplying his horses for the race, enables the organiser to arrange an event which the public may attend, which media undertakings may broadcast and which may be of interest to advertisers and sponsors. (12) The race organiser would not be able to organise and market his event without a certain number of horses participating and, clearly, the greater the skills of the horses, (13) the greater the

commercial value of the event. Therefore, it cannot be disputed that both the race organiser and the horse owner receive a direct and individual benefit from the transaction. (14) Accordingly, there is a direct link between the outstanding performance of a horse in a race (service supplied) and the payment of the prize (consideration received).

37.

The mere fact that a prize is not awarded to every horse participating in a race and that the award of a prize depends on the occurrence of an event that cannot be fully controlled by the parties does not mean that the underlying transaction does not involve any consideration. If a prize is eventually awarded, that prize constitutes, for the recipient, consideration actually received (15) for the purposes of Article 2(1)(c) of the VAT Directive. Accordingly, money prizes awarded in the context of horse races should, in principle, give rise to taxable transactions under VAT rules.

38.

The arguments put forward by the Czech Government against that position seem to me unconvincing. The fact that payment of consideration is subject to the fulfilment of a specific condition does not deprive the transaction of its onerousness.

39.

An example can probably clarify that point. If an individual requests the services of several estate agencies to assist him in the sale of his house, each of those agencies will perform some services to the benefit of that individual. They will all typically publish advertisements on different media, organise viewings with potential buyers and, more generally, give advice to the seller on how to maximise his chances of a sale. However, unless agreed otherwise, only the agency which finds a buyer usually receives, from the seller (and/or from the buyer), a pre-determined fee or commission, as a reward for its services, the others having worked for free. Yet it cannot be disputed that the amount of money paid to the successful agency constitutes consideration for the services rendered and, as a consequence, that the transaction is taxable under the VAT rules.

40.

The Court has, indeed, already stated that the economic activities of taxable persons, under the VAT rules, are those ‘carried on with the object of obtaining payment of consideration or which are likely to be rewarded by the payment of consideration’. (16) The Court has also confirmed that the fact that the amount of the consideration may vary does not call into question the existence of a direct link between a supply of services and the compensation to be provided. (17)

41.

Returning to the topic of horse races, it should be pointed out that the payment of the prizes at stake is not voluntary, but constitutes a legal or contractual obligation for the race organiser. The number and the amount of the prizes at stake, and the conditions under which they are to be granted, are set in advance and known to the owners, who, by entering a horse for a race, agree to them. This point needs to be emphasised: only the identity of the winners is uncertain before the race. I should only add to that that the chance of winning a prize generally constitutes one of the key motivations for horse owners to enter their horses for races.

42.

Those are all elements which the Court, in Tolsma, considered relevant for assessing the existence of a direct link between the supply of a service and the compensation received in return.

(18) Accordingly, the prize money obtained in a horse race should, to my mind, be subject to VAT.

43.

In the light of the proposed answer to question 1c, there is no need to answer questions 1a and 1b.

44.

For all those reasons, I am of the view that the Court should answer the first set of questions to the effect that: (i) insofar as the running of a horse in a race is a component of the economic activity of a person who operates in the field of breeding and training racehorses, the expenses related to that component give rise to deduction of input VAT; and (ii) the award of prizes to the horses producing the best performances gives rise to taxable transactions under the VAT Directive.

B – Second set of questions

45.

By its second set of questions, the referring court essentially seeks to know whether the operating of racing stables is, by virtue of point 14 of Annex III to the VAT Directive, as a whole subject to a reduced rate of VAT.

46.

The referring court explains that the service provided by Ms Baštová for the benefit of other horse owners — generally referred to in the main proceedings as ‘operation of racing stables’ — in reality consists of a combination of various services such as training of the horse, use of sports equipment, all-day accommodation in stables, feeding of and other care for the horse. In the light of the circumstances of the main action, the referring court is inclined to consider that the services supplied by Ms Baštová to the horse owners should be considered a single transaction and therefore be subject to a single VAT rate. However, that court is uncertain as to whether one or more of those services should be considered predominant and others should be regarded as ancillary. It thus asks the Court to indicate the criteria to be employed to that end. That is important insofar as some of the services supplied may involve the use of sporting facilities.

47.

The Czech Government and the Commission propose that the Court should answer the questions to the effect that the operating of racing stables is not, by virtue of point 14 of Annex III to the VAT Directive, as a whole subject to a reduced VAT rate.

48.

I agree.

49.

At the outset, I would call to mind that, in accordance with settled case-law, in certain circumstances, several formally distinct services, which could be supplied separately, must be considered to be a single transaction when they are not independent. There is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split. Such is the case where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary

services which share the tax treatment of the principal service. (19)

50.

On the basis of the information included in the order for reference, the position taken by the referring court as regards the indivisible nature of the services supplied by Ms Baštová seems reasonable to me. By purchasing her services, horse owners do not merely seek the training of their horses, or to be allowed to use the sporting facilities owned by Ms Baštová, but they also seek all-day accommodation and overall care for those animals. Despite the fact that each of those services could, in principle, be provided separately, it seems that the customers of Ms Baštová who conclude the contract referred to as ‘operating of racing stables’ seek precisely the combination of all those services. (20) Put differently, it would appear that all the various services provided are so closely linked that they are regarded as parts of a single package by both the service supplier (Ms Baštová) and, more importantly, her customers (the owners). (21)

51.

That said, the final determination as regards the fact that all those services constitute a single whole for determining the tax rate still falls to the referring court. Should that court confirm its preliminary view on this issue, it would then have to determine whether some of those services are to be regarded as predominant for the purposes of the VAT rules. Indeed, Ms Baštová argues that the services consisting in the use of sporting facilities are predominant and, as a consequence, the overall transaction must be subject to a reduced VAT rate.

52.

In that regard, it is important to point out that the Court has stated that a service is regarded as ancillary to a principal service in particular where it does not constitute for the customers an aim in itself, but a means of better enjoying the principal service supplied. (22) In distinguishing between main services and ancillary services the Court has also examined elements such as the importance of the various services for the customers, the time needed to supply them and the share of the total costs to be borne by the supplier for each service. (23)

53.

Against that background, the approach suggested by the referring court, consisting in examining, in particular, the relative value, and the time taken for the supply, of each service seems reasonable. Nor, however, would I disregard, in that context, the indications to be deduced from the costs to be sustained by Ms Baštová in her provision of each of those services (which is generally, but not necessarily, reflected in the value thereof) as well as the importance the customers attach to those services.

54.

At this juncture, however, before expanding my analysis on that point, I find it necessary to clarify the meaning and scope of point 14 of Annex III to the VAT Directive, according to which the ‘use of sporting facilities’ may be subject to a reduced rate of VAT.

55.

According to settled case-law, the application of either one or two reduced rates is an option accorded to the Member States as an exception to the principle that the standard rate applies. However, the reduced rates of VAT may be applied only to the supplies of goods and services specified in Annex III to the VAT Directive. (24) It is also settled case-law that provisions which

are in the nature of exceptions to a principle must be interpreted strictly. (25) In addition, the Court has already held that the terms used in Annex III to the VAT Directive must be interpreted in accordance with the normal sense of the terms at issue. (26)

56.

That being so, I take the view that the concept of ‘use of sporting facilities’ covers activities which are strictly related to the practice of sports by individuals. The use of the facilities is thus instrumental to the practice of sports by individuals. Accordingly, point 14 of Annex III to the VAT Directive, like Article 132(1)(m) of the same directive, (27) seeks in my view to promote the practice of sports (28) by large sections of the population. (29) In other words, the purpose of that provision is to encourage individuals to practise forms of physical activity which, through casual or organised participation, contribute to expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition. (30)

57.

An interpretation of the concept of ‘use of sporting facilities’ that would extend it to include also all the activities (inter alia, all-day accommodation of the horse in stables, feeding and other activities of care for the horse) and the facilities (which might include riding equipment, feed, cleaning products, the stables and stalls, the school, the grass area, the washing area, the rest areas and storage) referred to in the order for reference would excessively enlarge the scope of that exception. (31)

58.

That interpretation would also be inconsistent with the normal sense, in everyday language, of the concept of ‘use of sporting facilities’. It seems to me that, generally, that concept ought to be understood as referring to the use of immovable facilities, (32) having a permanent (such as swimming pools, race tracks, sports halls and fitness centres) or temporary character (such as public squares, beaches or lands provisionally set up as sports grounds for a specific event), (33) by individuals who are actually training or participating in a competition.

59.

Therefore, whereas the use of facilities such as, for example, the training track by individuals practising horse riding may fall within the exception provided for in point 14 of Annex III to the VAT Directive, the same cannot be said with regard to all the activities required for operating a racing stable, (34) as described by the referring court. In particular, when a horse is simply fed, cleaned, or cared for by staff, or when it is merely resting in the stables or in the paddocks, there is no use of sporting facilities for the purposes of the VAT Directive. That is so not only because no sporting facilities are being used, but also because no individuals are exercising any form of sport.

60.

The national court must bear that in mind when it weighs the value, duration, cost and importance of the services consisting in the use of sporting facilities against the value, duration, cost and importance of the other services.

61.

On my understanding of the file, the activities consisting in the use of sporting facilities do not exceed, in terms of value, duration, costs or importance, the other services. Activities such as feeding and providing all-day accommodation and general care for horses do not seem to me to

be services of relatively low value: they all seem crucial to ensure the well-being of the horses and their fitness in order to produce their best performance in sporting activities or activities of another nature. In any event, they certainly require important investments by the owner of the stables which, I assume, should be reflected in the price of each of those services — were Ms Baštová to break down the overall price according to the various services. Nor are those services, to my mind, of lesser importance in the eyes of the average horse owner: (35) I can hardly imagine those owners not being particularly concerned with the health and well-being of their animals. Finally, I suspect that the vast majority of the time spent by a horse in Ms Baštová's racing stables is in the indoor and outdoor resting areas, the stalls, the feeding areas, and so forth. These are all areas which, as explained above, cannot be regarded as 'sporting facilities' within the meaning of the VAT Directive.

62.

For all those reasons, I propose to answer the second set of questions to the effect that, subject to verification by the national court, the operating of racing stables cannot be as a whole subject to a reduced VAT rate by virtue of point 14 of Annex III to the VAT Directive.

IV – Conclusion

63.

In conclusion, I propose that the Court answer the questions referred for a preliminary ruling by the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) as follows:

—

insofar as the running of a horse in a race is a component of the economic activity of a person who operates in the field of breeding and training racehorses, the expenses related to that component give rise to deduction of input value added tax. The award of prizes to the horses producing the best performances gives rise to taxable transactions under Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;

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subject to verification by the national court, the operation of racing stables cannot as a whole be subject to a reduced rate of value added tax by virtue of point 14 of Annex III to Directive 2006/112.

(1) Original language: English.

(2) 'The Sporting Spirit', The London Tribune, December, 1945.

(3) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347 p. 1).

(4) See, inter alia, judgment of 29 October 2015 in Saudaçor, C?174/14, EU:C:2015:733, paragraph 31 and the case-law cited.

(5) See judgment of 20 June 2013 in Finanzamt Freistadt Rohrbach Urfahr, C?219/12, EU:C:2013:413, paragraph 18.

(6) See judgments of 13 December 2007 in Götz, C?408/06, EU:C:2007:789, paragraph 18, and 29 October 2009 in Commission v Finland, C?246/08, EU:C:2009:671, paragraph 37.

(7) Opinion of Advocate General Kokott in Gemeente Borsele and Staatssecretaris van Financiën, C?520/14, EU:C:2015:855, point 48 and the case-law cited.

(8) See, in particular, Article 26 of the VAT Directive. See also Article 184 and following of the same directive.

(9) See, by analogy, judgment of 11 April 2000 in Deliège, C?51/96 and C?191/97, EU:C:2000:199, paragraph 56.

(10) See, to that effect, judgment of 21 February 2013 in Becker, C?104/12, EU:C:2013:99, paragraphs 21 and 22.

(11) Judgment of 17 September 2002 in Town & County Factors, C?498/99, EU:C:2002:494, paragraph 20.

(12) See, to that effect, judgment of 11 April 2000 in Deliège, C?51/96 and C?191/97, EU:C:2000:199, paragraph 57.

(13) A horse running fast is also likely to make other horses run faster. As Publius Ovidius Naso (Ovid) (43 BC–17 AD) wrote, ‘tum bene fortis equus reserato carcere currit /cum quos praetereat quosque sequatur habet’ (‘when the gate is open, a horse never runs so fast/as when he has other horses to catch up and outpace’) (Ars Amatoria, Book III, 595-596).

(14) See, to that effect, judgment of 8 March 1988 in Apple and Pear Development Council, 102/86, EU:C:1988:120, paragraph 14.

(15) See, to that effect, judgment of 17 September 2002 in Town & County Factors, C?498/99, EU:C:2002:494, paragraph 27 and the case-law cited.

(16) Judgment of 1 April 1982 in Hong-Kong Trade Development Council, 89/81, EU:C:1982:121, paragraph 11 (emphasis added).

(17) Judgment of 29 October 2015 in Saudaçor, C?174/14, EU:C:2015:733, paragraph 37.

(18) Cf. judgment of 3 March 1994, C?16/93, EU:C:1994:80, paragraphs 17 and 19.

(19) See judgment of 17 January 2013 in BG? Leasing, C?224/11, EU:C:2013:15, paragraph 30 and the case-law cited.

(20) Cf. judgment of 19 July 2012 in Deutsche Bank, C?44/11, EU:C:2012:484, paragraphs 24 and 25.

(21) See, to that effect, Opinion of Advocate General Sharpston in Deutsche Bank, C?44/11, EU:C:2012:276, point 27.

(22) See judgment of 17 January 2013 in BG? Leasing, C?224/11, EU:C:2013:15, paragraph 41 and the case-law cited

(23) See, among others, judgments of 11 February 2010 in Graphic Procédé, C?88/09, EU:C:2010:76, paragraph 32; 29 March 2007 in Aktiebolaget NN, C?111/05, EU:C:2007:195, paragraph 36; and 27 October 2005 in Levob Verzekeringen and OV Bank, C?41/04, EU:C:2005:649, paragraph 28.

(24) See, among many, judgment of 17 June 2010 in Commission v France, C?492/08,

EU:C:2010:348, paragraph 35 and the case-law cited.

(25) Ibid.

(26) See judgment of 4 June 2015 in Commission v Poland, C?678/13, EU:C:2015:358, paragraph 46 and the case-law cited.

(27) That provision includes ‘the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education’ among the transactions which Member States must exempt.

(28) As regards the concept of ‘sports’ under the VAT rules, which is an autonomous concept of EU law, see judgment of 21 February 2013 in M?sto Žamberk, C?18/12, EU:C:2013:95, paragraph 17.

(29) See, by analogy, judgment of 19 December 2013 in The Bridport and West Dorset Golf Club, C?495/12, EU:C:2013:861, paragraph 20 and the case-law cited.

(30) Cf. Article 2(1)(a) of the European Sports Charter, adopted by the Committee of Ministers of the Council of Europe on 24 September 1992, as amended.

(31) See, to that effect, by analogy, judgment of 8 March 2012 in Commission v France, C?596/10, EU:C:2012:130, paragraph 54.

(32) Whereas the term in the English language version of Directive 2006/112 might be ambivalent on this point, other language versions of that directive are quite clear: for example, in Danish (‘sportsfaciliteter’), German (‘Sportanlagen’), Spanish (‘instalaciones deportivas’), French (‘installations sportives’), Italian (‘impianti sportivi’), Dutch (‘sportaccomodaties’), Portuguese (‘instalações desportivas’), Romanian (‘instala?iilor sportive’), and Swedish (‘sportanläggningar’).

(33) Cf. Swinkels, J.J.P., ‘Sports under EU VAT’, International VAT Monitor, 2 July 2010, No 4, pp. 280 and 281.

(34) See, to that effect, by analogy, judgment of 8 March 2012 in Commission v France, C?596/10, EU:C:2012:130, paragraph 55.

(35) That element must be assessed from the point of view of the typical consumer, who must be determined on the basis of objective factors. The fact that some individual customers may have a different point of view is irrelevant. See, to that effect, judgment of 21 February 2013 in M?sto Žamberk, C?18/12, EU:C:2013:95, paragraphs 33 and 35.