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OPINION OF ADVOCATE GENERAL

SZPUNAR

delivered on 28 June 2017 (1)

Case C?262/16

Shields & Sons Partnership

v

The Commissioners for Her Majesty’s Revenue and Customs

(Request for a preliminary ruling

from the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom))

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Article 296(2) and Article 299 — Common flat-rate scheme for farmers — Exclusion of farmers from the scheme — Conditions)

Introduction

1.

The application of VAT involves subjecting taxpayers to a series of administrative obligations. Fulfilling those obligations may be excessively burdensome for some of those taxpayers, especially if they carry on an economic activity on a relatively small scale. Therefore, in the provisions concerning VAT, simplified rules have been established for certain categories of taxpayers. This concerns, among others, farmers, for whom a flat-rate scheme is provided. The application of that scheme is optional for the Member States. However, if they do decide to introduce it, they do not have total discretion as to its form. In the present case, the Court will have the opportunity to clarify the fundamental principles in this area.

Legal framework

EU law

2.

According to Article 296(1) and (2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax: (2)

‘1. Where the application to farmers of the normal VAT arrangements, or the special scheme provided for in Chapter 1, is likely to give rise to difficulties, Member States may apply to farmers, in accordance with this Chapter, a flat-rate scheme designed to offset the VAT charged on purchases of goods and services made by the flat-rate farmers.

2. Each Member State may exclude from the flat-rate scheme certain categories of farmers, as well as farmers for whom application of the normal VAT arrangements, or of the simplified

procedures provided for in Article 281, is not likely to give rise to administrative difficulties.'

3.

The first paragraph of Article 297 of Directive 2006/112 provides:

'Member States shall, where necessary, fix the flat-rate compensation percentages. They may fix varying percentages for forestry, for the different subdivisions of agriculture and for fisheries.'

4.

The first paragraph of Article 298 of that directive provides:

'The flat-rate compensation percentages shall be calculated on the basis of macroeconomic statistics for flat-rate farmers alone for the preceding three years.'

5.

Lastly, Article 299 of Directive 2006/112 provides:

'The flat-rate compensation percentages may not have the effect of obtaining for flat-rate farmers refunds greater than the input VAT charged.'

United Kingdom law

6.

In United Kingdom law the common flat-rate scheme for farmers was introduced by section 54 of the Value Added Tax Act 1994. The Value Added Tax (Flat-rate Scheme for Farmers) (Percentage Addition) Order 1992, SI 1992/3221, sets the flat-rate compensation percentage at 4%. That percentage applies to all farmers within the flat-rate scheme. Regulation 206 of the Value Added Tax Regulations 1995, contained in Part XXIV of those regulations, established in implementation of section 54 of the Value Added Tax Act 1994, describes the circumstances in which the Commissioners for Her Majesty's Revenue and Customs (the United Kingdom tax authorities) may revoke a certificate authorising a farm to participate in the flat-rate scheme. Those circumstances include situations in which the tax authorities recognise that it is necessary to revoke a certificate in order to protect budget revenue.

7.

The United Kingdom tax authorities publish information for taxpayers concerning the interpretation of the provisions on VAT ('VAT Notices'). According to the information contained in the request for a preliminary ruling, those notices do not have binding force, but in practice the tax authorities invoke them in their relations with taxpayers. In the decision at issue in the main proceedings, the tax authorities invoked VAT Notice 700/46 concerning the common flat-rate scheme for farmers. According to point 7.2 of that notice, a farmer is required to leave the scheme if he is 'found to be recovering substantially more as a flat-rate farmer than [he] would if [he] were registered for VAT in the normal way'.

Facts, procedure, and the questions referred for a preliminary ruling

8.

The undertaking Shields & Sons Partnership ('Shields & Sons') runs a farm in Castlewellan (United Kingdom). The economic activity carried out on that farm is the breeding of cattle, and is

thus covered, in the United Kingdom, by the common flat-rate scheme for farmers.

9.

Shields & Sons has been covered by the common flat-rate scheme for farmers since the tax year 2004/2005. In that tax year, the reimbursement which Shields & Sons received by way of flat-rate compensation corresponded in principle to the amount of VAT which that undertaking would have been entitled to recover as a taxpayer operating under the normal arrangements. In subsequent years, however, those amounts began to vary significantly, such that the accumulated surplus in terms of compensation for the tax years from 2004/2005 to 2011/2012 amounted to 374884.23 pounds sterling (GBP). (3)

10.

In that situation the tax authorities, by decision of 15 October 2012, revoked the certificate authorising Shields & Sons to participate in the flat-rate scheme for farmers, invoking the fact that that undertaking had been found to be recovering substantially more as a flat-rate farmer than it would have recovered if it had been registered for VAT in the normal way. That decision was confirmed by decision of 21 December 2012.

11.

By judgment of 8 October 2014, the First-tier Tribunal (Tax Chamber) (United Kingdom) dismissed the complaint brought against that decision by Shields & Sons. That undertaking lodged an appeal against that judgment before the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom), the referring tribunal in the present case.

12.

According to that tribunal, the parties to the main proceedings disagree on the correct interpretation of the provisions of Directive 2006/112 concerning the common flat-rate scheme for farmers. In those circumstances, the Upper Tribunal (Tax and Chancery Chamber) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1)

With regard to the common flat-rate scheme for farmers which is established by Chapter 2 of Title XII of [Directive 2006/112], is Article 296(2) [of that directive] to be interpreted as providing an exhaustive regime as to when a Member State is able to exclude a farmer from [that] scheme? In particular:

(1.1)

Is a Member State only able to exclude farmers from the common flat-rate scheme for farmers pursuant to Article 296(2) [of Directive 2006/112]?

(1.2)

Is a Member State also able to exclude a farmer from the common flat-rate scheme for farmers using Article 299 of that directive?

(1.3)

Does the principle of fiscal neutrality give a Member State a right to exclude a farmer from the

common flat-rate scheme for farmers?

(1.4)

Do Member States have an entitlement to exclude farmers from the common flat-rate scheme for farmers on any other grounds?

(2)

How is the term “categories of farmers” in Article 296(2) of [Directive 2006/112] to be interpreted? In particular:

(2.1)

Must a relevant category of farmers be capable of being identified by reference to objective characteristics?

(2.2)

Can a relevant category of farmers be capable of being identified by reference to economic considerations?

(2.3)

What level of precision is required in identifying a category of farmers which a Member State has purported to exclude?

(2.4)

Does it entitle a Member State to treat as a relevant category “farmers who are found to be recovering substantially more as members of the flat-rate scheme than they would if they were registered for VAT”?’

13.

The request for a preliminary ruling was received by the Court on 12 May 2016. Written observations were submitted by Shields & Sons, the United Kingdom and French Governments, and the European Commission. Shields & Sons, the United Kingdom Government and the Commission were represented at the hearing on 15 March 2017.

Analysis

14.

By submitting the questions referred for a preliminary ruling in the present case, the referring tribunal is essentially seeking to establish whether and, if so, on what basis a Member State can exclude from the common flat-rate scheme a farmer who, being in that scheme, obtains substantially more by way of flat-rate compensation than the amount of VAT which he would be entitled to recover if he were subject to the normal arrangements. I shall begin my analysis of the questions referred with a brief reminder of the characteristics of the common flat-rate scheme for farmers.

Common flat-rate scheme for farmers

15.

As a general rule, with the exception of certain types of activities which qualify for exemption, all transactions effected by taxpayers in connection with their economic activities are subject to VAT. The levying of that tax, however, places a series of administrative obligations on taxpayers, including, in particular, in the field of accounting. This is necessary to ensure the proper functioning of VAT, because that tax is largely based on records and checks of tax obligations being fulfilled by those taxpayers. For that reason, however, certain categories of economic operators, in particular those whose activity is on a small scale, are not in a position to fulfil those administrative obligations and/or find that those obligations present them with substantial difficulties. For that reason, Directive 2006/112 provides for simplified systems of VAT treatment.

16.

Farmers are among the categories of taxpayers for whom such simplified systems are provided. Directive 2006/112, in Articles 295 to 305 thereof, establishes a common flat-rate scheme for farmers. To summarise, under that scheme a farmer (known as a ‘flat-rate farmer’ in accordance with Article 295(1)(3) of Directive 2006/112) is not obliged to pay VAT due to the State budget and does not have the right to deduct tax charged for the purchase of goods and services necessary for his activities. However, depending on the solutions adopted in individual Member States, he may include in the price of his own supplies of goods and services to other taxpayers flat-rate compensation, the percentage of which is to be set by the Member State in accordance with Article 297 of Directive 2006/112. In the United Kingdom that percentage is 4%. Purchasers of those goods and services treat that flat-rate compensation as input VAT and have the right to deduct it from the tax for which they are liable. Compensation can also be paid directly to flat-rate farmers by the State budget.

17.

The common flat-rate scheme for farmers serves two purposes. (4) First, it is intended to provide administrative simplification for flat-rate farmers. The lack of obligation to pay VAT due to the State budget and the simultaneous lack of opportunity to deduct input tax enables flat-rate farmers to be exempt from a series of administrative obligations, such as the recording of goods and services purchased, the keeping of accounts, the issuing of invoices, and suchlike.

18.

Secondly, that scheme is intended to enable flat-rate farmers to offset the costs of VAT charged for the purchase of goods or services used for the purposes of their activities. Were it not for such compensation, those farmers would bear the burden of that tax, which would be contrary to the principle of VAT neutrality for taxpayers, according to which the burden of that tax is to be borne by consumers. However, because the compensation percentage is calculated on an overall basis, in relation to all flat-rate farmers, tax neutrality is also maintained only on an overall basis. This means that in the case of one specific flat-rate farmer the compensation may in fact be higher or lower than the amount of VAT charged in a given tax year.

19.

The common flat-rate scheme for farmers derogates from the general rules of Directive 2006/112 and must therefore be applied only to the extent necessary to achieve its objectives. (5) Therefore, first, it must not be applied to farmers for whom application of the normal arrangements or, where appropriate, the special scheme for small enterprises (6) would not give rise to

administrative difficulties. Secondly, the application of the flat-rate scheme must not involve, in relation to all flat-rate farmers in a given Member State, the recovery by way of flat-rate compensation of an amount greater than the amount of VAT which those farmers would be entitled to recover under the normal arrangements.

20.

It is necessary to examine the questions referred for a preliminary ruling in the present case in the light of the foregoing considerations.

The first question referred

21.

The first question referred concerns the possibility of excluding a farmer from the flat-rate scheme. The referring tribunal is seeking to establish whether that exclusion can take place exclusively on the basis of the premiss contained in Article 296(2) of Directive 2006/112, or whether it may also be based on other grounds, in particular Article 299 of that directive or in connection with an infringement of the principle of VAT neutrality.

22.

It should be borne in mind that Article 296(2) of Directive 2006/112 sets out two cases in which a farmer may be excluded from the flat-rate scheme. The first concerns a general exclusion by the Member State of certain categories of farmers. The way in which a Member State may define those categories is the subject of the second question referred for a preliminary ruling in the present case; I will therefore address that issue later in this Opinion.

23.

The second premiss for exclusion concerns farmers for whom application of the normal arrangements or simplified procedures would not give rise to difficulties. Such an exclusion is usually linked to the size of the farm or the amount of turnover achieved by that farm (7) and is based on the presumption that a farm of a specific size is in a position to manage the administrative obligations resulting from its status as an entity subject to VAT.

24.

As is apparent, the foregoing premisses concern, as a rule, exclusion ex ante, in the sense that farmers belonging to the categories excluded from the application of the flat-rate scheme cannot be covered by that scheme. Cases of exclusion ex post, that is, the exclusion of farmers already covered by the flat-rate scheme, may arise when a flat-rate farmer moves from a category covered by the scheme to a category not covered by that scheme, for example as a result of an increase in the scale of his activities or of a shift in production. In such a situation a farmer ceases to fulfil the criteria for adherence to the flat-rate scheme, which justifies his exclusion from that scheme.

25.

I do not believe, however, that the exclusion of a flat-rate farmer from the scheme can take place on other grounds, in particular on the grounds suggested by the referring tribunal in the first question referred. In this respect I concur with the views expressed by Shields & Sons, the French Government and the Commission in their observations in the present case.

26.

So far as concerns the principle of VAT neutrality, as I have already mentioned, the common flat-rate scheme for farmers was intentionally based by the EU legislature on a certain generalisation. In order to simplify administrative obligations, the legislature relinquished the idea of full fiscal neutrality in respect of each specific flat-rate farmer in favour of overall neutrality of the scheme in respect of all such farmers. Thus, in the context of the flat-rate scheme, specific farmers may receive compensation which is higher or lower than the amount of input VAT, which does not run counter to the principle of VAT neutrality, or, as the Commission maintains in its observations, constitutes a deliberate legislative derogation from that principle. (8)

27.

With regard to Article 299 of Directive 2006/112, that provision sets out guidelines for Member States when determining flat-rate compensation percentages. Those states must determine that percentage in such a way that the compensation does not exceed the overall amount of input VAT charged. The flat-rate compensation percentage is to be determined, in accordance with the first paragraph of Article 298 of that directive, on the basis of macroeconomic statistics for all flat-rate farmers. Therefore, Article 299 of that directive cannot constitute a basis for the issuing of individual decisions concerning individual flat-rate farmers. This is because the regulations relating to the means of establishing the flat-rate compensation percentage concern all flat-rate farmers and not each of them individually. Furthermore, as the Commission correctly observes, Article 295(1)(6) of that directive defines, for the purposes of applying the provisions relating to the common flat-rate scheme for farmers, input VAT charged as being the total amount of VAT charged on the purchase of goods and services by all flat-rate farmers for use in their activities. Therefore, that article does not mean that individual flat-rate farmers are precluded from obtaining compensation which exceeds the VAT actually paid by them.

28.

As Shields & Sons correctly remarks in its observations in the present case, the Member States have at their disposal a series of instruments to ensure that a flat-rate farmer has not obtained, through his participation in the scheme, compensation exceeding the VAT which he would be entitled to recover under the normal arrangements. I add that, in my view, the Member States not only can, but even must, make use of those instruments. This is because such excessive compensation is contrary both to the nature of the flat-rate scheme as a derogation from the normal arrangements and to the clear rule set out in Article 299 of Directive 2006/112, and may, moreover, constitute aid for (some) flat-rate farmers. (9)

29.

Therefore, the Member States must, first, apply the flat-rate scheme only to farmers for whom application of the normal arrangements or the simplified procedures would give rise to administrative difficulties (Article 296(1) of Directive 2006/112). It is also possible to exclude from that scheme farmers for whom, for example because of the scale of their activities, such difficulties do not exist, or no longer exist (Article 296(2)). Secondly, a Member State can exclude specific categories of farmers from the scheme in advance (idem). Thirdly, a Member State can determine flat-rate compensation percentages in different ways for different subdivisions of agriculture (second sentence of the first paragraph of Article 297). Such differentiation may be particularly advisable if, on account of substantial differences in the added value of agricultural production to the value of goods and services purchased for the purposes of that production, there are substantial differences in the amounts of actual compensation obtained by farmers carrying on

activities in individual subdivisions of production. Fourth and lastly, the Member States are to determine the flat-rate compensation percentage on the basis of macroeconomic statistics for the preceding three years (first paragraph of Article 298), which also means that that percentage can be corrected if the macroeconomic statistics indicate excessive compensation.

30.

In the light of the foregoing, it is hard not to question the correctness of the manner in which the flat-rate scheme for farmers is regulated in United Kingdom law. This is because, as is apparent from the findings of the referring tribunal, as a result of those regulations a farm with very large-scale production, (10) maintaining detailed accounts, (11) receives in the context of the flat-rate scheme compensation of more than three times the amount of input VAT which that farm would be entitled to recover under the normal arrangements. If it were to transpire that such situations occur universally, this would mean that the manner in which the flat-rate scheme for farmers is regulated in the United Kingdom is structurally incompatible with the provisions of Directive 2006/112.

31.

However, a Member State may not cancel out the negative effects of its action (or lack of action) on a macroeconomic level by means of measures directed against individual economic operators. Nor is this altered by the optional nature of the flat-rate scheme for farmers, which I addressed in my previous Opinion concerning that subject. (12)

32.

This is because, in a situation in which a Member State has decided on the implementation of the flat-rate scheme for farmers and has given it the proper form, namely in a situation in which that scheme is intended exclusively for farmers for whom application of the normal arrangements or the simplified procedures would give rise to difficulties and the flat-rate compensation percentage has been set at an appropriate level, a farmer fulfilling the criteria for participation in the scheme can legitimately expect that he will have the right to access the scheme and remain in that scheme, irrespective of the actual financial results of that membership in individual tax years. If the position were otherwise, the objective of the flat-rate scheme, which is to simplify and reduce the administrative obligations for taxpayers for whom application of the normal taxation arrangements would give rise to difficulties, would not be achieved.

33.

In view of the foregoing, I propose that the answer to the first question referred should be that Articles 295 to 305 of Directive 2006/112 are to be interpreted as meaning that the only acceptable premisses for the exclusion of a flat-rate farmer from the common flat-rate scheme for farmers governed by those provisions are those set out in Article 296(2) of that directive.

The second question referred

34.

By submitting the second question referred, the referring tribunal is essentially seeking clarification as to whether a Member State may, on the basis of Article 296(2) of Directive 2006/112, exclude from the flat-rate scheme a category of farmers described as ‘farmers who are found to be recovering substantially more as members of the flat-rate scheme than they would if they were registered for VAT’.

35.

That question has arisen in the context of the position adopted by the tax authorities represented in the main proceedings and supported by the United Kingdom Government in its observations in the present case, according to which that precise category of farmers was defined in United Kingdom law and excluded from the flat-rate scheme in accordance with Article 296(2) of Directive 2006/112.

36.

As I have indicated above, (13) Article 296(2) of Directive 2006/112 permits the Member States to exclude certain categories of farmers from the flat-rate scheme. That provision constitutes an indication for the Member States concerning the way in which the flat-rate scheme is to be regulated in their national law. The exclusion here in question is thus an ex ante structural element of that scheme, in the sense that categories subject to exclusion must be defined in advance and in an abstract way, so that a farmer faced with a potential decision about entering the scheme is in a position to assess whether he belongs to a category that is subject to exclusion and whether he may still belong to that category in the future. This is required by the principles of legal certainty and of the protection of legitimate expectations.

37.

This is also apparent from the structure of Article 296(2) of Directive 2006/112, which refers to the concept of ‘categories of farmers’, while it then goes on to permit the exclusion from the scheme of ‘farmers’ for whom application of the normal arrangements or the simplified procedures is not likely to give rise to problems. Therefore, in that second case, it is possible to carry out an analysis of the individual situation of individual farmers, whereas the first clearly concerns categories defined in abstracto and a priori.

38.

It is of course possible that a farmer initially not belonging to a category subject to exclusion may subsequently come within the scope of such a category. This can occur for example as a result of an increase in the scale of his activities or a change in the nature of those activities. Those are situations which depend on the decisions of the person concerned, in which he is in a position to anticipate the impact of those decisions on his status as a flat-rate farmer. It does not, however, appear to me to be consistent with the logic of the flat-rate scheme that participation in that scheme may automatically give rise to exclusion from that scheme because of the advantageous financial results for a given farmer attributable to his participation in the scheme.

39.

In addition, that exclusion is based on the premiss in the form of the aforementioned comparison of the amount obtained by way of flat-rate compensation with the amount of VAT which the person concerned would in theory be entitled to recover if he were operating as a taxpayer under the normal arrangements. First, that premiss is largely not dependent on the decisions of the person concerned, because the amount of turnover achieved (on which the amount of compensation, expressed as a percentage of that turnover, is dependent) depends only partially on the value of the goods and services purchased for the purposes of his activities, as does the amount of VAT charged.

40.

Secondly, under normal conditions a flat-rate farmer is not even in a position to foresee or state the existence of such a premiss for exclusion from the scheme. It should be borne in mind that the flat-rate scheme is intended for farmers for whom application of the normal arrangements would give rise to administrative difficulties. For that reason, flat-rate farmers are exempt from a series of obligations, in particular in the area of the keeping of records and accounts. Therefore, a flat-rate farmer is not in a position to calculate the amount of VAT which he would have been entitled to recover under the normal arrangements, because the flat-rate scheme operates precisely in such a way that he is not obliged to carry out such calculations. If, as in the main proceedings, a flat-rate farmer keeps accounts allowing such data to be obtained, this means most probably that the flat-rate scheme is being applied in a way that goes beyond what is necessary to achieve its objectives.

41.

For the foregoing reasons, I consider that, even if it is accepted that United Kingdom law excludes from the flat-rate scheme a category of farmers as defined in the second question referred, that category is structured in a way which is not consistent with the logic of that scheme and membership of that scheme cannot serve as a basis for exclusion therefrom.

42.

Furthermore, the Commission correctly points out in its observations that the way in which the exclusion of the category of farmers mentioned above from the scheme is invoked by the United Kingdom tax authorities does not fulfil the criteria of clarity and precision required in relation to the transposition of provisions of EU law into national law.

43.

In accordance with the case-law of the Court, (14) the use by a Member State of the option provided for in that directive requires, for reasons of legal certainty, the adoption of a specific provision and compliance with specific, precise and clear criteria, thereby making it possible for a judicial review to be conducted.

44.

However, the singling out of a category of farmers subject to exclusion from the flat-rate scheme which is invoked by the tax authorities does not result from the provisions of the legislation, because those provisions (15) confine themselves to empowering the tax authorities to exclude flat-rate farmers from the scheme if those authorities consider that this is necessary for the purposes of protecting budget revenue. The indication that this is referring to farmers who obtain in the context of the scheme compensation substantially exceeding the VAT which they would be entitled to recover under the normal arrangements appears only in a non-binding notice for taxpayers. (16) As is apparent from the request for a preliminary ruling, that information does not constitute a provision of law, but is rather an indication clarifying the administrative practice of the tax authorities.

45.

Shields & Sons is therefore correct when it states in its observations in the present case that the exclusion from the scheme of flat-rate farmers who obtain compensation substantially exceeding the VAT which they would be entitled to recover under the normal arrangements is more an

entitlement for the tax authorities to exclude specific farmers than a systematic exclusion, defined in the abstract and a priori, of categories of farmers within the meaning of Article 296(2) of Directive 2006/112.

46.

In view of the foregoing, I propose that the answer to the second question referred should be that Article 296(2) of Directive 2006/112 is to be interpreted as meaning that the category of farmers who are found to be recovering substantially more as members of the flat-rate scheme than they would recover if they were registered for purposes of VAT is not a category of farmers that is properly structured for the purposes of applying that provision.

Conclusion

47.

Having regard to all of the foregoing, I propose that the questions referred by the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) should be answered as follows:

(1)

Articles 295 to 305 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax should be interpreted as meaning that the only acceptable premisses for the exclusion of a flat-rate farmer from the common flat-rate scheme for farmers governed by those provisions are those set out in Article 296(2) of that directive.

(2)

Article 296(2) of Directive 2006/112 should be interpreted as not authorising the exclusion from the flat-rate scheme of the category of farmers defined as farmers who are found to be recovering substantially more as members of that scheme than they would recover if they were registered for purposes of VAT.

(1) Original language: Polish.

(2) OJ 2006 L 347, p. 1.

(3) These data are not disputed. According to the records of Shields & Sons' own accountant, in particular in the tax years from 2008/2009 to 2011/2012, the reimbursement by way of compensation was around three times more than the VAT which that undertaking would have been entitled to recover under the normal arrangements.

(4) See judgment of 12 October 2016, Nigl and Others (C?340/15, EU:C:2016:764, paragraph 38 and the case-law cited).

(5) See judgment of 12 October 2016, Nigl and Others (C?340/15, EU:C:2016:764, paragraph 37 and the case-law cited).

(6) Governed by Articles 281 to 292 of Directive 2006/112.

(7) This is the case in, for example, French law, and indirectly (via other provisions regarding the obligation to keep accounts) in Polish and Austrian law.

(8) Such a derogation is — as is apparent — possible, since the principle of neutrality, unlike the principle of equal treatment, which is given specific expression in the field of VAT, is not

constitutional in nature (see judgment of 29 October 2009, NCC Construction Danmark, C?174/08, EU:C:2009:669, paragraphs 42 and 43).

(9) See Opinion of Advocate General Kokott in Commission v Portugal (C?524/10, EU:C:2011:613, point 36).

(10) As is apparent from the same request for a preliminary ruling, Shields & Sons received in the tax year 2011/2012 reimbursement by way of flat-rate compensation amounting to over GBP 200000, which, extrapolating from the percentage of 4%, indicates a turnover amounting to GBP 5000000.

(11) Indeed, the above information comes from the data compiled by Shields & Sons' accountant.

(12) See my Opinion in Nigl and Others (C?340/15, EU:C:2016:505, point 49).

(13) See point 22 of this Opinion.

(14) Judgment of 4 June 2009, SALIX Grundstücks-Vermietungsgesellschaft (C?102/08, EU:C:2009:345, paragraphs 51 to 58).

(15) Specifically Regulation 206 of the Value Added Tax Regulations 1995 (see point 6 of this Opinion).

(16) VAT Notice 700/46, point 7.2 (see point 7 of this Opinion).