JUDGMENT OF THE COURT (Sixth Chamber)
25 May 1993 *

In Case C-193/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof for a preliminary ruling in the proceedings pending before that court between

Finanzamt München III

and

Gerhard Mohsche

on the interpretation of Article 6(2) of Directive 77/388/EEC, Sixth Council Directive of 17 May 1977 on the harmonization 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),

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, J. L. Murray, G. F. Mancini, F. A. Schockweiler and D. A. O. Edward, Judges,

Advocate General: F. G. Jacobs,
Registrar: Lynn Hewlett, Administrator,

after considering the written observations submitted on behalf of:

* Language of the case: German.

— the Government of the Federal Republic of Germany, by Ernst Röder, Ministerialrat at the Federal Ministry of Economic Affairs, and Claus-Dieter Quassowski, Regierungsdirektor at the said Ministry, acting as Agents,

— the Commission of the European Communities, by Henri Étienne, Principal Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the parties at the hearing on 8 October 1992,

after hearing the Opinion of the Advocate General at the sitting on 10 November 1992,

gives the following

Judgment

1 By order of 18 April 1991, received at the Court on 29 July 1991, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Article 6(2) of Directive 77/388/EEC, Sixth Council Directive of 17 May 1977 on the harmonization 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, 'the Sixth Directive').

2 The questions were raised in an appeal introduced by Mr Mohsche against a decision of the Finanzamt München III (Tax Office Munich III, 'the Finanzamt') determining the turnover tax payable for the 1983 financial year.

3 In 1983 Mr Mohsche, a tool manufacturer, used for private purposes a motor car belonging to his business. In assessing the value added tax payable for 1983 the Finanzamt included in the taxable amount a sum corresponding to the provision for depreciation of the vehicle and a percentage of certain expenses incurred for the use and maintenance of the vehicle.

4 Mr Mohsche lodged an appeal with the Finanzgericht München (Finance Court, Munich) against the decision of the Finanzamt. The Finanzgericht held that depreciation of the vehicle had rightly been included in the basis of assessment but that the basis of assessment should not have included certain expenses incurred for the maintenance or use of the vehicle, in particular the garage rental, motor vehicle duty, insurance and parking fees, since Mr Mohsche had not been taxed for those payments and had not deducted value added tax.

5 The Finanzamt appealed on a point of law to the Bundesfinanzhof, which expressed certain doubts as to whether Article 1(1)(2)(b) of the German Law on turnover tax (Umsatzsteuergesetz 1980) correctly implemented Article 6(2) of the Sixth Directive. It therefore decided to stay the proceedings pending a preliminary ruling by the Court of Justice on the following questions:

'1. Does Article 6(2) of the Sixth Directive (77/388/EEC) prohibit taxation of the private use of goods forming part of the assets of a business upon whose acquisition the taxable person was able to deduct the VAT, in so far as such use also includes services which the taxable person received without deduction of input VAT from third parties for the maintenance or use of the goods?

2. If so, can a taxable person rely upon that prohibition before the national courts?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts and legal framework of the main proceedings, the proceedings and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

First question

7 Article 6(2)(a) of the Sixth Directive provides that: 'The following shall be treated as supplies of services for consideration:

(a) the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the value added tax on such goods is wholly or partly deductible;

(b) ...'.

8 The Court has held that it follows from the structure of the Sixth Directive that Article 6(2)(a) is designed to prevent the non-taxation of business goods used for private purposes and therefore requires the taxation of the private use of such goods only where the tax paid on their acquisition was deductible (see Case 50/88 *Kühne* v *Finanzamt München III* [1989] ECR 1925, paragraph 8).

9 The taxation of business goods on which the residual tax was not deductible would lead to double taxation contrary to the principle of fiscal neutrality which is inherent in the common system of value added tax, of which the Sixth Directive forms part (see the *Kühne* judgment, paragraph 10).

10 It is appropriate, therefore, to consider whether, for the purposes of taxing the private use of business goods where the tax paid on their acquisition was deductible, it is necessary to take into account, in addition to the use of the goods properly so-called, the maintenance or running costs incurred by the taxable person where no input tax could be deducted by him in respect of those costs.

11 The wording of Article 6(2)(a) of the Sixth Directive sheds no light on the scope of the expression 'use of goods'. Taken alone, that expression may be understood in a strict sense, as referring only to the use of goods proper, or in a wider sense in which it also includes services and other expenses associated with that use.

12 The German Government, relying on the fact that Article 6(2)(a) of the Sixth Directive requires simply that the value added tax on the goods be wholly or partly deductible, observes that the use of goods must be understood in a wide sense including all the expenses attaching thereto, whether or not input tax is deductible.

13 Such a view, however, would be incompatible with the purpose of Article 6(2)(a) of the Sixth Directive. Unlike normal services, which are taxable in principle, whether or not the input tax on the goods and services used for their implementation is deductible, the private use of goods is taxable only exceptionally.

14 Consequently, the words 'use of goods' must be interpreted strictly, including only the use of the goods themselves. Thus the ancillary services relating to that use do not come under Article 6(2)(a) of the Sixth Directive.

15 The answer to the first question must therefore be that Article 6(2)(a) of the Sixth Directive must be interpreted as precluding taxation of the private use of goods forming part of the assets of a business upon whose acquisition the taxable person was able to deduct the value added tax in so far as such use also includes services which the taxable person received without deduction of input tax from third parties for the maintenance or use of the goods.

Second question

16 By its second question the Bundesfinanzhof asks whether a taxable person can rely before the competent national courts on Article 6(2)(a) of the Sixth Directive inasmuch as that provision excludes taxation of the private use of business goods from which value added tax has already been deducted in so far as such use includes services which the taxable person received without deduction of input tax from third parties for the maintenance or use of the goods.

17 According to the case-law of the Court (see, in particular, Case 8/81 *Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53), where the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon by individuals as against any national provision which is incompatible with the directive.

18 It follows from the answer to the first question that in the circumstances described Article 6(2)(a) of the Sixth Directive prohibits imposition of value added tax on the private use of goods forming part of the assets of a business. That prohibition is not subject to any condition and does not depend, as regards its implementation or effects, on the intervention of a Community or national measure. It can therefore produce direct effects in the legal relations between the Member States and persons subject to their laws.

19 The answer to the second question must therefore be that a taxable person may rely before the competent national courts on Article 6(2)(a) of the Sixth Directive inasmuch as that provision precludes taxation of the private use of business goods from which value added tax has already been deducted in so far as that use includes services which the taxable person received without deduction of input tax from third parties for the maintenance or use of the goods.

Costs

20 The costs incurred by the German Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber)

in answer to the questions submitted to it by the Bundesfinanzhof by order of 18 April 1991, hereby rules:

1. Article 6(2)(a) of the Sixth Directive, Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as precluding taxation of the private use of goods forming part of the assets of a business upon whose acquisition the taxable person was able to deduct the value added tax in so far as such use also includes services which the taxable person received without deduction of input tax from third parties for the maintenance or use of the goods.

2. **A taxable person may rely before the competent national courts on Article 6(2)(a) of the Sixth Directive inasmuch as that provision precludes taxation of the private use of business goods from which value added tax has already been deducted in so far as that use includes services which the taxable person received without deduction of input tax from third parties for the maintenance or use of the goods.**

Kakouris Murray

Mancini Schockweiler Edward

Delivered in open court in Luxembourg on 25 May 1993.

J.-G. Giraud C. N. Kakouris

Registrar President of the Sixth Chamber