

Case C-97/90

H. Lennartz

v

Finanzamt München III

(Reference for a preliminary ruling
from the Finanzgericht München)

(VAT — Deduction of the tax paid on capital goods)

Report for the Hearing	I - 3796
Opinion of Mr Advocate General Jacobs delivered on 30 April 1991	I - 3812
Judgment of the Court (Sixth Chamber), 11 July 1991	I - 3834

Summary of the Judgment

*Tax provisions — Harmonization of laws — Turnover taxes — Common system of value added tax — Deduction of input tax — Capital goods — Adjustment of the deduction initially made — Conditions for the applicability of Article 20(2) of the Sixth Directive — Acquisition of goods by a taxable person for the purposes of his economic activities — Criteria for assessment — Taxable person satisfying those conditions — Right of deduction — Restrictive national measure — Subject to the rules on derogations
(Council Directive 77/388, Arts 4, 17, 20(2) and 27(1) and (5))*

Article 20(2) of the Sixth Directive, which concerns adjustments to the deductions of value added tax initially made in respect of capital goods, does no more than establish the procedure for calculating the adjustments to the initial deduction. It cannot therefore give rise to any right to deduct or convert the tax paid by a taxable

person in respect of his non-taxable transactions into tax that is deductible within the meaning of Article 17. For it to be applicable, it is necessary for a person to acquire capital goods in his capacity as a taxable person and allocate them to his economic activity within the meaning of Article 4 of the Sixth Directive. However, in

such a case the immediate use of the goods for taxable or exempt supplies does not in itself constitute a precondition for its application.

Whether, in a particular case, a taxable person has acquired goods for the purposes of his economic activity within the meaning of Article 4 of the Sixth Directive is a question of fact which must be determined in the light of all the circumstances of the case, including the nature of the goods concerned and the period between the acquisition of the goods and their use for

the purposes of the taxable person's economic activity.

A taxable person who uses goods for the purposes of an economic activity has the right on the acquisition of those goods to deduct input tax in accordance with the rules laid down in Article 17 of the Sixth Directive, however small the proportion of business use. A rule or administrative practice imposing a general restriction on the right of deduction in cases where there is limited, but none the less genuine, business use constitutes a derogation from Article 17 of the directive and is valid only if the requirements of Article 27(1) or Article 27(5) of the directive are met.

REPORT FOR THE HEARING in Case C-97/90 *

I — Legal framework of the main proceedings

With respect to taxable transactions, Article 6 makes the following provision:

Article 4 of the Sixth Directive, contained in Title IV (Taxable Persons), provides as follows:

'The following shall be treated as supplies of services for consideration:

'1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.'

(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.'

* Language of the case: German.