

## Case C-45/01

**Christoph-Dornier-Stiftung für Klinische Psychologie**

v

**Finanzamt Gießen**

(Reference for a preliminary ruling from the Bundesfinanzhof (Germany))

(VAT — Article 13A(1)(b) and (c) of the Sixth Directive 77/388/EEC — Exemption — Psychotherapeutic treatment given in an out-patient facility provided by a foundation governed by private law (charitable establishment) employing qualified psychologists who are not doctors — Direct effect)

Opinion of Advocate General Stix-Hackl delivered on 10 December 2002 I-12915  
Judgment of the Court (Fifth Chamber), 6 November 2003 . . . . . I-12936

### Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Exemptions provided for by the Sixth Directive — Exemption for*

*hospital and medical care and closely related activities* — Concept of ‘closely related activities’ and ‘medical care’ — Psychotherapeutic treatment given by qualified psychologists

(Council Directive 77/388, Art. 13A(1)(b) and (c))

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Exemptions provided for by the Sixth Directive — Exemption for hospital and medical care and closely related activities — Concept of ‘other duly recognised establishment of a similar nature’ — Recognition subject to services being provided under medical supervision — Not permissible*  
(Council Directive 77/388, Art. 13A(1)(b))
3. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Exemptions provided for by the Sixth Directive — Exemption for hospital and medical care and closely related activities — Concept of ‘other duly recognised establishment of a similar nature’ — Member States’ discretion — Limits — Duties of national courts*  
(Council Directive 77/388, Art. 13A(1)(b))
4. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Exemptions provided for by the Sixth Directive — Exemption for medical care provided in the exercise of the medical and paramedical professions — Scope — Treatment provided by practitioners employed by a foundation governed by private law — Covered*  
(Council Directive 77/388, Art. 13A(1)(c))
5. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Exemptions provided for by the Sixth Directive — Exemption for hospital and medical care and closely related activities and exemption for medical care provided in the exercise of the medical and paramedical professions — Possibility for taxable persons to rely on the corresponding provisions*  
(Council Directive 77/388, Art. 13A(1)(b) and (c))

1. Psychotherapeutic treatment given in an out-patient facility of a foundation governed by private law by qualified psychologists who are not doctors is

not an activity ‘closely related’ to hospital or medical care within the meaning of the exemption provided for in Article 13A(1)(b) of the Sixth Direc-

tive 77/388, except where such treatment is actually given as a service ancillary to the hospital or medical care received by the patients in question and constituting the principal service.

However, the term 'medical care' in that provision must be interpreted as covering all provision of medical care envisaged in letter (c) of the same provision, including services provided by persons who are not doctors but who give paramedical services, such as psychotherapeutic treatment given by qualified psychologists. Those services fulfil the condition of having a therapeutic purpose, namely the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders.

(see paras 35, 48, 51,  
operative part 1)

2. For the purposes of the exemption provided for in Article 13A(1)(b) of the Sixth Directive 77/388, a Member State may not validly make recognition of 'other... establishments of a similar nature' to hospitals and centres for medical treatment or diagnosis subject to a condition requiring that paramedical services provided by those other establishments be given under medical

supervision. Such a condition, in so far as it is intended to preclude the exemption from applying to treatment given under the sole responsibility of members of paramedical professions, goes beyond the limits of the discretion allowed to the Member States under that provision in that the term 'medical care' in that provision covers not only treatment provided directly by doctors or other health professionals under medical supervision, but also paramedical services given in hospitals under the sole responsibility of persons who are not doctors.

(see paras 70-71)

3. Recognition of an 'establishment of a similar nature' to hospitals and centres of medical treatment or diagnosis for the purposes of the exemption provided for in Article 13A(1)(b) of the Sixth Directive 77/388 does not presuppose a formal recognition procedure; nor must such recognition necessarily derive from national tax law provisions.

Where the national rules pertaining to recognition contain restrictions which exceed the limits of the discretion

allowed to Member States under that provision, in particular an infringement of the principle of equal treatment as compared to other operators providing the same treatment in comparable situations, it is for the national court to determine, in the light of all the relevant facts, whether a taxable person must none the less be regarded as an 'other duly recognised establishment of a similar nature' within the meaning of that provision.

(see paras 69, 74, 76,  
operative part 2)

4. Since the exemption for the provision of medical care in the exercise of the medical and paramedical professions envisaged in Article 13A(1)(c) of the Sixth Directive 77/388 is not dependent on the legal form of the taxable person providing the services referred to in that provision, psychotherapeutic treatment provided by a foundation governed by private law and given by psychotherapists employed by the foundation may benefit from that exemption.

(see para. 21, operative part 3)

5. The provisions of Article 13A(1)(b) and (c) of the Sixth Directive 77/388, relating to the exemption for hospital and medical care and closely-related activities and for the provision of medical care in the exercise of the medical and paramedical professions, may be relied on by a taxable person before a national court in order to contest the application of rules of national law which are incompatible with those provisions. The fact that they confer discretion on the Member States to determine, first, which establishments are not 'governed by public law' but which may benefit from the exemption provided for in Article 13A(1)(b) and, second, for which paramedical professions the exemption provided for in letter (c) of the same provision may be granted, does not prevent individuals who, according to objective criteria, provide treatment in the public interest envisaged by those exemptions, from relying directly on the provisions of the Sixth Directive as against national provisions which do not comply with that directive.

(see paras 81, 84, operative part 4)