JUDGMENT OF THE COURT (Fifth Chamber)

1 April 2004 *

In Case C-90/02,

REFERENCE to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between

Finanzamt Gummersbach

and

Gerhard Bockemühl,

on the interpretation of Articles 18(1) and 22(3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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), as amended by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value

* Language of the case: German.

added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1) and by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax (OJ 1992 L 384, p. 47),

THE COURT (Fifth Chamber),

composed of: P. Jann, acting for the President of the Fifth Chamber, A. Rosas and S. von Bahr (Rapporteur), Judges,

Advocate General: F.G. Jacobs,
Registrar: M.-F. Contet, Principal Administrator,

after considering the written observations submitted on behalf of:

— the German Government, by W.-D. Plessing and M. Lumma, acting as Agents,

— the Commission of the European Communities, by E. Traversa and K. Gross, acting as Agents, and A. Böhlke, Rechtsanwalt,

having regard to the Report for the Hearing,

after hearing the oral observations of the Finanzamt Gummersbach, represented by F. Fürst, acting as Agent, of Mr Bockemühl, represented by J.A. Nohl and C. Hesener, Steuerberater, and of the Commission, represented by K. Gross and A. Böhlke, at the hearing on 11 September 2003,

after hearing the Opinion of the Advocate General at the sitting on 23 October 2003,

gives the following

Judgment

1 By order of 22 November 2001, which reached the Court on 15 March 2002, the Bundesfinanzhof referred for a preliminary ruling under Article 234 EC three questions on the interpretation of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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), as amended by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1) and by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax (OJ 1992 L 384, p. 47; 'the Sixth Directive').

2 Those questions were raised in a dispute between the Finanzamt Gummersbach ('the Finanzamt') and Mr Bockemühl concerning the Finanzamt's refusal to allow Mr Bockemühl to deduct value added tax ('VAT') on services supplied to him. They concern in essence the conditions for exercising the right to deduct referred to in Article 18(1) of the Sixth Directive, where the taxpayer concerned is himself liable for that tax by reason of the fact that the supplier of the services is established outside the country concerned.

Legal background

Community legislation

3 Article 2(1) of the Sixth Directive provides that VAT is to be imposed on the supply of goods or services effected for consideration within the country by a taxable person acting as such.

4 In relation to the supply of services, the place of the taxable operation is determined in accordance with Article 9 of that directive, Article 9(1) providing that that place is to be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides. By way of exception to that rule, however, Article 9(2) provides:

'(a) the place of the supply of services connected with immovable property, including the services of estate agents and experts, and of services for

preparing and coordinating construction works, such as the services of architects and of firms providing on-site supervision, shall be the place where the property is situated;

...

(e) the place where the following services are supplied, when performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides:

...

— the supply of staff,

...'

5 Concerning the right to deduct, Article 17(2) of the Sixth Directive provides:

'In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person liable for the tax within the territory of the country;

...'

6 Article 18 of the Sixth Directive, on the rules governing the exercise of the right to deduct, reads:

'1. To exercise his right to deduct, the taxable person must:

(a) in respect of deductions under Article 17(2)(a), hold an invoice, drawn up in accordance with Article 22(3);

(b) in respect of deductions under Article 17(2)(b), hold an import document, specifying him as consignee or importer, and stating or permitting calculation of the amount of tax due;

(c) in respect of deductions under Article 17(2)(c), comply with the formalities established by each Member State;

(d) when he is required to pay the tax as a customer or purchaser where Article 21(1) applies, comply with the formalities laid down by each Member State.

...

3. Member States shall determine the conditions and procedures whereby a taxable person may be authorised to make a deduction which he has not made in accordance with the provisions of paragraphs 1 and 2.

...'

7 Concerning the persons liable to pay VAT, the first paragraph of Article 21(1)(a) provides that tax is due under the internal system from a taxable person carrying out the taxable supply of goods or of services, other than one of the supplies of services referred to in Article 21(1)(b). However, the second and third paragraphs of Article 21(1)(a) of the Sixth Directive provide:

'Where the taxable supply of goods or of services is effected by a taxable person who is not established within the territory of the country, Member States may adopt arrangements whereby tax is payable by another person. Inter alios a tax representative or the person for whom the taxable supply of goods or of services is carried out may be designated as that other person.

However, the tax is payable by the person to whom the supply of goods is made when the following conditions are met:

...

— the invoice issued by the taxable person not established within the territory of the country conforms to Article 22(3).

...'

8 Under Article 21(1)(b) of the Sixth Directive, VAT is due from persons to whom services covered by Article 9(2)(e) are supplied, when the service is carried out by a taxable person established abroad.

9 Article 21(1)(c) provides that VAT is due from any person who mentions the value added tax on an invoice or other document serving as an invoice.

10 Article 22(3) of the Sixth Directive provides:

'3. (a) Every taxable person shall issue an invoice, or other document serving as invoice, in respect of goods and services which he has supplied or rendered to another taxable person or to a non-taxable legal person ...

(b) The invoice shall state clearly the price exclusive of tax and the relevant tax at each rate as well as any exemptions.

...

(c) Member States shall lay down the criteria that shall determine whether a document may be considered an invoice.

...'

The national legislation

11 In conformity with Article 21(1) of the Sixth Directive, the Federal Republic of Germany has enacted in Paragraph 51 of the Umsatzsteuer-Durchführungsverordnung 1993 (VAT Implementing Regulation, BGBl. 1993 I, p. 565; 'the UStDV 1993') that:

'(1) The person to whom the service is supplied must withhold the tax on the consideration and pay it to his local tax office in respect of the following taxable transactions:

1. Supply of work and other services by an undertaking established abroad;

...

(3) An undertaking established abroad is one which does not have its place of residence, head office or centre of management, or any branch establishment within this country or in a customs-free territory. The relevant date is the date on which the consideration is given. If it is doubtful whether the undertaking fulfils those conditions, the person to whom the services are supplied may only omit to deduct and pay over the tax if the undertaking can prove to him, by way of a certificate from the tax office responsible under the German Tax Code for the taxation of its transactions, that it is not an undertaking within the meaning of the first sentence.

(4) The consideration within the meaning of subparagraph (1) means the price including VAT.'

12 However, Paragraph 52(2) and (3) of the UStDV introduced exceptions to the obligations under Paragraph 51:

'(2) The person to whom services are supplied shall not be obliged to deduct and pay over the tax on the undertaking's services where:

1. the undertaking has not issued an invoice showing the tax separately, and

2. the person to whom the services are supplied could claim a full deduction of that input tax if the tax were shown separately.

(3) For the condition in subparagraph (2), point 2 to be fulfilled, it is not necessary that the undertaking supplying the service be authorised to make separate mention of the VAT in an invoice.

...'

The dispute in the main proceedings and the questions referred

13 Mr Bockemühl runs a construction company in Germany. During the financial year in question, he had engaged English workers who had been placed at his disposal by a company calling itself 'Jaylink Bau Ltd Building Contractors'. That company had a contact address in the Netherlands.

14 The work carried out by those English workers was invoiced to Mr Bockemühl under the name of the company in question, the invoices bearing an English VAT identification number. A first London address was given on the invoices covering the period from 14 December 1994 to 22 March 1995, whereas another London address was indicated on those covering the period from 29 March 1995 to 19 July 1995. Those invoices described the service invoiced as work, whereas in reality it was the supply of staff.

15 According to investigations carried out by the Bundesamt für Finanzen (Federal Finance Ministry), there was a company called 'Jaylink Building Contractors Ltd', on the English Register of Companies as at 21 May 1992, whose registered office was at the address mentioned on the first invoices. The company did not appear in local telephone directories.

16 The invoices did not show any VAT, but contained the words 'Nullregelung Par. 52 UStDV vereinbart' (zero rate Para. 52 UStDV as agreed). However, after an audit, the Finanzamt took the view that the services invoiced had not been carried out by the company whose name appeared on the invoices but by another, unknown, undertaking. Accordingly, by a tax assessment notice of 23 August 1996, it held that, as the recipient of the services, Mr Bockemühl was liable to pay VAT of DEM 17 219.17 on the taxable transactions in question.

17 Following an action brought by Mr Bockemühl, the Finanzgericht Köln (Germany) annulled that assessment and the subsequent decision on Mr Bockemühl's administrative complaint, dated 27 March 1997, holding that there was 'no reasonable doubt that the person issuing the invoice and the undertaking supplying the service were one and the same person'.

18 It is against that judgment that the Finanzamt appealed on a point of law to the Bundesfinanzhof, arguing that the conditions for applying the 'zero rule' in Article 52(2), point 2, of the UStDV 1993 were not fulfilled inasmuch as the identity of the person supplying the services was, in its submission, doubtful. Mr Bockemühl was therefore liable for the tax.

19 According to the order for reference, the procedure for deduction at source laid down by Paragraph 51 et seq. of the UStDV 1993 was replaced, from 1 January

2002, by a procedure implying that the recipient of the services is liable to tax on the ground that that procedure for deduction at source was not in accordance with Community rules. However, the referring court considers that those paragraphs of the UStDV 1993 remain applicable for the financial year in question in so far as they can be interpreted in accordance with the rules of Community law.

20 In that context, and with a view to seeing the relevant national provisions applied in a manner consistent with the Sixth Directive, the national court considers that the services in question were supplied by a taxable person established abroad, and that the place where the services were supplied was Germany, either by virtue of Article 9(2)(a) of the Sixth Directive concerning supplies of services relating to immovable property or by virtue of Article 9(2)(e) of that directive concerning the supply of staff. For the purposes of that latter provision, the referring court is of the view that the Federal Republic of Germany is required, in accordance with Article 21(1)(b) of the Sixth Directive, to regard Mr Bockemühl, as the person to whom the services were supplied, as liable for VAT.

21 Concerning the right to deduct, as laid down in Paragraph 52(2), point 2, of the UStDV 1993, the referring court considers that, having used the services in question for his taxable transactions, Mr Bockemühl should be entitled to deduct input VAT in accordance with Article 17(2)(a) of the Sixth Directive. Having doubts, however, as to the conditions giving rise to the right to deduct, it decided to stay the proceedings and refer three questions to the Court for a preliminary ruling:

'(1) Is it necessary under Article 18(1)(a) of Directive 77/388/EEC for a person to whom services are supplied, who is liable to pay tax under Article 21(1) of Directive 77/388 and who has been charged to tax as such, to be in possession

of an invoice issued in accordance with Article 22(3) of Directive 77/388 in order to exercise his right to deduct input tax?

(2) If the first question is answered in the affirmative, what details must the invoice contain? Is it detrimental if, instead of the supply of staff, the work carried out using that staff is given as the service supplied?

(3) What would be the consequences in law of inextinguishable doubts that the person issuing the invoice supplied the service invoiced?'

The first and second questions

22 In its first and second questions, which fall to be considered together, the referring court asks, first, whether, in a situation where the reverse charge procedure applies, the right to deduct of a taxable person, liable as the recipient of services for the VAT relating thereto, can be exercised only if that taxable person holds an invoice drawn up in accordance with Article 22(3) of the Sixth Directive. In the event of an affirmative answer to that question, it asks, secondly, what information must be given on that invoice and, in particular, whether the amount of the VAT and the name and address of the supplier of the services must be specified and whether an incorrect specification of the services has legal implications for the right to deduct.

Observations submitted to the Court

23 According to the German Government and the Commission, which are the only parties to have submitted written observations, Article 18(1)(a) of the Sixth Directive undeniably applies to this case. They underline the express nature of the obligation laid down by that provision, namely to hold an invoice drawn up in accordance with Article 22(3) of the Sixth Directive, an obligation which, they submit, admits of no exceptions.

24 According to the German Government, even if the recipient of the supply is himself liable for VAT, that transfer of the debt to the recipient of the supply is nothing more than another way of levying VAT and can have no effect on the conditions for access to the right to deduct.

25 The Commission further argues that that solution accords with the general system of Article 21(1) of the Sixth Directive. That provision stipulates that, in relation to supplies of goods by a taxable person not established within the country, VAT is payable by the recipient only if the invoice complies with Article 22(3) of the Sixth Directive.

26 The Commission further refers to the amendments since made by Council Directive 2001/115/EC of 20 December 2001 amending Directive 77/388 with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax (OJ 2001 L 15, p. 24). It stresses that the new wording of Article 22(3) of the Sixth Directive specifies that where an exemption is involved or where the customer is liable to pay VAT, the invoice must refer to the appropriate provision of the Sixth Directive, to the corresponding national provision, or to any indication that the supply is exempt or subject to the reverse charge procedure.

27 The German Government argues that, from the point of view of the fiscal administration, the invoice has an important documentary function in that it contains verifiable information allowing the amount of deductible input VAT to be established, in cases where the Member State has enacted exceptions to the right to deduct in respect of certain supplies.

28 In reply to a written question from the Court, the Finanzamt, the German Government and the Commission have replied that Article 18(1)(a) and Article 18 (1)(d) of the Sixth Directive apply cumulatively so that, where the reverse charge procedure applies, the taxable person must fulfil the additional formalities prescribed by the Member States in the context of the exercise of the option which is open to them pursuant to Article 18(1)(d) of the Sixth Directive. That latter provision does not, therefore, in their submission, allow Member States to adopt exceptions which alleviate the conditions laid down by Article 18(1)(a) of the Sixth Directive.

29 In any event, the Commission notes that Article 18(1)(d) of the Sixth Directive expressly refers to the application of Article 21(1) of that directive, according to which the transfer of the tax debt is subject to the condition that 'the invoice issued by the taxable person not established within the territory of the country conform to Article 22(3)'. Therefore, it maintains, Article 18(1)(d) leaves the requirement as to the holding of an invoice unchanged.

30 As to whether the invoice must mention the amount of VAT in question, both the German Government and the Commission consider that both the sense and the purpose of Article 22(3)(b) of the Sixth Directive militate in favour of a solution whereby, in cases where the recipient of the supply is also the person owing the tax debt, the provision should be interpreted restrictively with no requirement for a separate reference to VAT.

31 The German Government puts forward a number of arguments in support of that argument. First, the recipient of the supply, as the person owing the tax debt, should himself calculate the amount of VAT which he is required to pay, without being obliged to rely on the corresponding references appearing in the invoice drawn up by the undertaking which made the supply. Secondly, in the event of a separate reference to VAT, the supplier would, in accordance with Article 21(1)(c) of the Sixth Directive, be liable for VAT alongside the recipient of the supply, which would be contrary to the spirit of the Sixth Directive. Thirdly, referring to the wording of Article 22(3)(b) of the Sixth Directive, as since amended by Directive 2001/115, the German Government observes that the system thus established comprises rules which make any separate reference to the amount of the VAT superfluous.

32 According to the Commission, Article 22(3)(b) of the Sixth Directive should be regarded as treating such transfer of the tax debt as a case of exemption. Otherwise, the issuer of the invoice would become liable for VAT merely by referring to it in his invoice, in accordance with Article 21(1)(c) of the Sixth Directive, without the recipient of the supply being able to use his right to deduct in relation to that tax. The Commission concludes that, if the recipient of the supply is liable for VAT, it is sufficient to mention that fact on the invoice or to enter a reference on the invoice to the provision pursuant to which that is so.

33 Concerning the name and address of the person making the supply, the German Government refers first to the judgments in Joined Cases 123/87 and 330/87 *Jeunehomme and EGI* [1988] ECR 4517, paragraph 17, and Case C-141/96 *Langhorst* [1997] ECR I-5073, paragraph 17. It considers that, even if Article 22 (3)(c) of the Sixth Directive and the case-law of the Court of Justice do not require Member States to demand such references, the latter nevertheless have the power to demand additional references.

34 The Commission considers that it follows from the judgment in Case C-342/87 *GeniusHolding* [1989] ECR 4227, which in its view recognises the power to verify

the genuineness of the taxable transaction, that the invoice must permit identification of the taxable person, with his name and address, and also of the transaction in question.

35 Concerning reference to the nature of the supply, the German Government considers that Member States must be able to require that this be precisely indicated on the invoice, so as to ensure accurate collection of VAT and to prevent evasion.

36 According to the Commission, since the invoice represents the essential means of verifying the proper application of VAT, the description of the transaction invoiced must be sufficiently precise to reveal the type of transaction in question, whether that transaction is taxable, the place where it was carried out and, in appropriate cases, the identity of the taxable person.

Reply of the Court

37 As the Advocate General has observed in point 37 of his Opinion, a taxable person liable for VAT as the recipient of goods or services is able to rely on the right to deduct contained in Article 17(2)(a) of the Sixth Directive. That position is confirmed by the amendments subsequently made to that provision by Council Directive 95/7/EC of 10 April 1995 amending Directive 77/388 and introducing new simplification measures with regard to value added tax — scope of certain exemptions and practical arrangements for implementing them (OJ 1995 L 102, p. 18), which eliminated divergences in that respect between various language versions.

38 According to consistent case-law, the right to deduct laid down in Article 17 of the Sixth Directive forms an integral part of the VAT mechanism and in principle cannot be limited. It may be exercised immediately in respect of all taxes affecting earlier transactions in the chain (see, in particular, the judgments in Case C-62/93 *BP Soupergaz* [1995] ECR I-1883, paragraph 18, and Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 43).

39 The system of deductions is intended entirely to relieve an undertaking of the burden of VAT due or paid in the context of all its economic activities. The common system of VAT therefore guarantees neutrality in relation to the tax burden of all economic activities whatever their aim or result, provided those activities are themselves subject to VAT (see, in particular, Case 268/83 *Rompelman* [1985] ECR 655, paragraph 19; Case C-37/95 *Ghent Coal Terminal* [1998] ECR I-1, paragraph 15; and *Gabalfrisa*, cited above, paragraph 44).

40 Concerning the conditions for exercising the right to deduct, Article 18(1)(a) of the Sixth Directive provides as a general rule that, for the deduction referred to in Article 17(2)(a), the taxable person must hold an invoice drawn up in accordance with Article 22(3) of that directive.

41 Where, however, in accordance with Article 21(1) of the Sixth Directive, it is the recipient of the services who is liable for VAT, Article 18(1)(d) of that directive states that he is required to fulfil the formalities laid down by each Member State.

42 In that regard, the order for reference shows that, in this case, Mr Bockemühl is in principle entitled to exercise the right to deduct in his capacity as a person liable for VAT. However, he is not in possession of an invoice drawn up in accordance with Article 22(3) of the Sixth Directive.

43 In those circumstances, the question arises whether, in a case such as the present where the reverse charge procedure applies, it is only the provisions of Article 18 (1)(d) of the Sixth Directive which apply, or whether, as the German Government, the Finanzamt and the Commission maintain, Article 18(1)(a) also applies.

44 In that regard, it should be noted first that Article 22(3) of the Sixth Directive, in the version which applied at the time of the facts, did not expressly refer to the reverse charge procedure. As the German Government and the Commission have demonstrated in their observations, application of that provision in the context of that procedure would raise difficulties of interpretation concerning, in particular, the provision requiring indication of the amount of VAT as a precondition for exercising the right to deduct (see paragraphs 30 to 32 of this judgment). In addition, even though the amendments made to Article 22(3)(b) of the Sixth Directive by Directive 2001/115 mention the reverse charge procedure, as indicated in paragraph 26 of this judgment, the fact remains that Article 22 of the Sixth Directive, concerning the invoicing obligation, makes no reference to the conditions as such which open up the right to deduct.

45 Secondly, concerning the Commission's argument based on the general scheme of the third paragraph of Article 21(1)(a) of the Sixth Directive in so far as that provision stipulates, in respect of supplies of goods carried out by a taxable person not established inside the country, that VAT is payable by the recipient only if the invoice complies with Article 22(3) of the Sixth Directive, it should be noted that the third paragraph of Article 21(1)(a) of the Sixth Directive merely sets out the conditions under which the recipient of a supply of goods may be designated as liable for VAT.

46 It is for a similar reason that, thirdly, the Court cannot accept the Commission's argument that Article 18(1)(d) of the Sixth Directive appears to leave the requirement for the holding of an invoice unchanged, inasmuch as that article expressly refers to the application of Article 21(1) of that directive and the third

paragraph of Article 21(1)(a) requires as a condition for the transfer of the tax debt that 'the invoice issued by the taxable person not established within the territory of the country conform to Article 22(3)'. As stated in the previous paragraph of this judgment, the third paragraph of Article 21(1)(a) of the Sixth Directive merely sets out the conditions under which the recipient of a supply of goods may be designated as liable for VAT.

47 The Court therefore finds that, on a proper interpretation of Article 18(1)(a) and (d) of the Sixth Directive, only Article 18(1)(d) applies to the reverse charge procedure such as that in this case. Therefore, a taxable person who is liable as the recipient of services for the VAT relating thereto is not obliged to hold an invoice drawn up in accordance with Article 22(3) of the Sixth Directive in order to be able to exercise his right to deduct, and only has to fulfil the formalities laid down by the Member State concerned in the exercise of the option conferred by Article 18(1)(d) of the Sixth Directive.

48 That interpretation is, moreover, supported by the wording of Article 18(1)(c) of the Sixth Directive, which, in terms identical to those of Article 18(1)(d), imposes the condition that the taxable person must fulfil the formalities that are established by each Member State. The former provision applies to situations relating to self-supply, in which it is logical that the right to deduct should not be subject to the obligation to hold an invoice drawn up in accordance with Article 22(3) of the Sixth Directive.

49 Concerning the exercise of the option given by Article 18(1)(d) of the Sixth Directive, whilst that provision allows Member States to establish formalities concerning the exercise of the right to deduct in cases where the reverse charge procedure applies, the fact remains that that power must be exercised in conformity with one of the aims pursued by the Sixth Directive, which is to ensure

the collection of VAT and its verification by the tax administration (see, as regards Article 22(3)(c) of the Sixth Directive, the judgment in *Langhorst,* cited above, paragraph 17). Moreover, that power may be exercised only in so far as, by the number or the technical nature of such formalities, their imposition does not make it practically impossible or excessively difficult to exercise the right to deduct (see, in relation to Article 22(3)(b) of the Sixth Directive, in conjunction with Article 18 (1)(a) thereof, the judgment in *Jeunehomme*, cited above, paragraph 17).

50 Therefore, as regards Article 18(1)(d) of the Sixth Directive, the imposition and extent of formalities to be complied with in order to be able to exercise the right to deduct should not exceed what is strictly necessary for the purposes of verifying the correct application of the reverse charge procedure concerned.

51 In that context, it is true that an invoice has an important documentary function because it may contain verifiable data. In a reverse charge situation, however, it is precisely on the strength of such verifiable information that the recipient of goods or services will have been held liable for the VAT, and in what amount. Where the tax administration has the information necessary to establish that the taxable person is, as the recipient of the supply in question, liable to VAT, it cannot, in relation to the right of that taxable person to deduct that VAT, impose additional conditions which may have the effect of rendering that right ineffective for practical purposes.

52 Therefore, where a taxable person, as the recipient of services, is designated as liable for the VAT relating thereto, the tax administration cannot require as an additional condition for the right to deduct that that person be in possession of an invoice drawn up in conformity with Article 22(3) of the Sixth Directive. Such a requirement would result in a taxable person being, on the one hand, liable as the recipient of services for the VAT in question, but, on the other hand, risking not being able to deduct that tax.

53 In the light of the above, the answer to the first question must be that, where the reverse charge procedure applies, a taxable person who is liable, as the recipient of services, for the VAT relating thereto in accordance with Article 21(1) of the Sixth Directive is not obliged to be in possession of an invoice drawn up in accordance with Article 22(3) of the Sixth Directive in order to be able to exercise his right to deduct.

54 Concerning the second question, there is no need to reply to.

The third question

55 Given the answer to the first question, there is no need to reply to the third question.

Costs

56 The costs incurred by the German Government and by the Commission, 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Bundesfinanzhof by order of 22 November 2001, hereby rules:

A taxable person who is liable, as the recipient of services, for the value added tax relating thereto, in accordance with Article 21(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers and by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax, is not obliged to be in possession of an invoice drawn up in accordance with Article 22 (3) of that directive in order to be able to exercise his right to deduct.

Jann Rosas von Bahr

Delivered in open court in Luxembourg on 1 April 2004.

R. Grass V. Skouris

Registrar President