

Case C-453/05

Volker Ludwig

v

Finanzamt Luckenwalde

(Reference for a preliminary ruling
from the Finanzgericht des Landes Brandenburg)

(Sixth Directive — VAT — Concept of transactions
consisting in ‘the negotiation of credit’)

Judgment of the Court (First Chamber), 21 June 2007 I - 5086

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Exemptions provided for in the Sixth Directive (Council Directive 77/388, Art. 13B(d)(1))*

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Exemptions provided for in the Sixth Directive*
(Council Directive 77/388, Art. 13B(d)(1))

1. The fact that a taxable person analyses the financial situation of clients canvassed by him with a view to obtaining credit for them does not preclude recognition of the service supplied as being a negotiation of credit which is exempt under Article 13B(d)(1) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes if the negotiation of credit offered by that taxable person falls to be considered as the principal service to which the provision of financial advice is ancillary, in such a way that the latter shares the same tax treatment as the former. It is for the national court to determine whether that is the case in the proceedings before it.

(see para. 20, operative part 1)

that taxable person from providing a service of negotiation of credit which is exempt under Article 13B(d)(1) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes.

The transactions exempted under Article 13B(d)(1) of the Sixth Directive are defined in terms of the nature of the services provided and not in terms of the person supplying or receiving the service. That provision, in fact, makes no reference to the latter. The same observation may be made as regards the nature of the relationship between the negotiator and the parties to the contract, since there is no reference to that subject in the wording of Article 13B(d)(1) of the Sixth Directive.

2. The fact that a taxable person has no contractual link with any of the parties to a credit agreement to the conclusion of which he has contributed and that he does not establish direct contact with one of those parties does not preclude

Moreover, the wording of Article 13B(d)(1) of the Sixth Directive does not, in principle, preclude the activity of negotiation from being broken down into separate services which may then fall under the concept of 'negotiation of

credit' for the purposes of that provision and benefit from the exemption for which it provides. In those circumstances, it follows from the principle of fiscal neutrality that operators must be able to choose the form of organisation which, from the strictly commercial point of view, best suits them, without running the risk of having their opera-

tions excluded from the exemption provided for in Article 13B(d)(1) of the Sixth Directive.

(see paras 25, 26, 34, 35, 40,
operative part 2)