

Case C-73/06

Planzer Luxembourg Sàrl

v

Bundeszentralamt für Steuern

(Reference for a preliminary ruling from the Finanzgericht Köln)

(Sixth VAT Directive — Article 17(3) and (4) — Refund of VAT — Eighth VAT Directive — Refund of VAT to taxable persons not established inside the country — Articles 3(b) and 9, second paragraph — Annex B — Certificate of status as a taxable person — Legal scope — Thirteenth VAT Directive — Refund of VAT to taxable persons not established in Community territory — Article 1(1) — Concept of ‘business’)

Opinion of Advocate General Trstenjak delivered on 19 April 2007 I - 5658
Judgment of the Court (Fourth Chamber), 28 June 2007 I - 5677

Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Refund of the tax to taxable persons not established in the territory of the country*
(Council Directive 79/1072, Arts 3(b), 9, second para., and Annex B)

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Refund of the tax to taxable persons not established in the territory of the Community*
(Council Directive 86/560, Art. 1(1))

1. Articles 3(b) and 9, second paragraph, of the Eighth Directive 79/1072 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country must be interpreted as meaning that the certificate in accordance with the specimen in Annex B to that directive does in principle allow the presumption that the person concerned is not only subject to VAT in the Member State whose tax authorities issued it, but also that he is established in that Member State in one way or another, whether by having his business there or a fixed establishment from which operations are carried out.

Those provisions do not, however, imply that the tax authorities of the refunding Member State are prohibited, where they have doubts as to the economic reality of the establishment whose address is given in that certificate, from verifying that reality by having recourse to the administrative measures made available for that purpose by Community legislation on VAT.

If the information obtained shows that the address given in the certificate of status as a taxable person does not correspond either to the place of business of the person concerned, or to a fixed establishment from which he carries out his operations, the tax authorities of the refunding Member State are entitled to refuse the refund applied for by that person, without prejudice to any possible legal action by the latter.

The tax authorities of the Member State in which refund of input VAT is applied for are, in principle, bound in fact and in law by the information contained in that certificate.

(see paras 40, 41, 49, 50, operative part 1)

2. Article 1(1) of the Thirteenth Directive 86/560 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory must be interpreted as meaning that the place of a company's business is the place where the essential decisions concerning its general management are taken and where the functions of its central administration are exercised.

Determination of a company's place of business requires a series of factors to be taken into consideration, foremost amongst which are its registered office, the place of its central administration, the place where its directors meet and the place, usually identical, where the general policy of that company is

determined. Other factors, such as the place of residence of the main directors, the place where general meetings are held, the place where administrative and accounting documents are kept, and the place where the company's financial, and particularly banking, transactions mainly take place, may also need to be taken into account.

Thus, a fictitious presence, such as that of a 'letter box' or 'brass plate' company, cannot be described as a place of business for the purposes of Article 1(1) of the Thirteenth Directive.

(see paras 61-63, operative part 2)