

7. Does the exemption for 'transactions concerning payments [or] transfers' apply to services, such as those offered by the taxpayer in the present case, of receiving and processing payments made over the counter at a bank for credit, through the banking system, to the taxpayer's bank account?
8. What particular factors have to be taken into account when deciding whether a charge (such as the payment handling charge in the present case) that is applied by a taxpayer to its customer in respect of the customer's choice to make payment to the taxpayer using a particular payment method, and which is individually identified in the contractual document and separately itemised in invoices issued to customers, is a separate supply for VAT purposes?

- (b) under the relevant United Kingdom legislation the supplies consisting of the rental of cars were treated as supplies of services made in Germany and accordingly not subject to value added tax in the United Kingdom. Under German law these supplies were treated as supplies of goods made in the United Kingdom and accordingly not subject to value added tax in Germany. The consequence was that no output tax was charged on these supplies in either member state;
- (c) the United Kingdom bank selected its German subsidiary as lessor and determined the duration of the leasing arrangements with a view to obtaining the tax advantage of no VAT being chargeable on the rental payments:

(<sup>1</sup>) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment  
OJ L 145, p. 1

1. Is Article 17(3)(a) of the Sixth Directive (<sup>1</sup>) (now Article 169(a) of the Principal VAT Directive) to be interpreted as entitling the United Kingdom tax authorities to refuse to allow the German subsidiary to deduct VAT which it paid in the United Kingdom in respect of the purchase of the cars?

2. In determining the answer to the first question, is it necessary for the national court to extend its analysis to consider the possible application of the principle of prohibiting abusive practices?

3. If the answer to Question 2 is yes, would the deduction of input tax on the purchase of the cars be contrary to the purpose of the relevant provisions of the Sixth Directive and thus satisfy the first requirement for an abusive practice as described in paragraph 74 of the decision of the Court in Halifax plc and Others v Customs & Excise Commissioners (Case C-255/02) having regard among other principles to the principle of the neutrality of taxation?

4. Again if the answer to Question 2 is yes, should the court consider that the essential aim of the transactions is to obtain a tax advantage, so that the second requirement for an abusive practice as described in paragraph 75 of the said decision of the Court is satisfied, in circumstances where in a commercial transaction between parties operating at arm's length, the choice of a German subsidiary to lease the cars to a United Kingdom customer, and of the terms of the leases, are made with a view to obtaining the tax advantage of no output tax being charged on the rental payments?

**Reference for a preliminary ruling from Court of Session (Scotland), Edinburgh (United Kingdom) made on 21 July 2009 — The Commissioners for Her Majesty's Revenue & Customs v RBS Deutschland Holdings GmbH**

(Case C-277/09)

(2009/C 267/53)

*Language of the case: English*

**Referring court**

Court of Session (Scotland), Edinburgh

**Parties to the main proceedings**

*Applicant:* The Commissioners for Her Majesty's Revenue & Customs

*Defendant:* RBS Deutschland Holdings GmbH

**Questions referred**

In circumstances such as those of the present case, where:

- (a) a German subsidiary of a United Kingdom bank purchased cars in the United Kingdom with a view to leasing them to an unconnected company in the United Kingdom and paid value added tax on these purchases;

(<sup>1</sup>) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment  
OJ L 145, p. 1