Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 February 2015 *

(Reference for a preliminary ruling — Value added tax — Deductions — Exemptions — Supplies of dental prostheses)

In Joined Cases C-144/13, C-154/13 and C-160/13,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Netherlands), made by decisions of 1 and 8 March 2013, received at the Court on 21, 27 and 28 March 2013 respectively, in the proceedings

VDP Dental Laboratory NV

v

Staatssecretaris van Financiën (C-144/13),

Staatssecretaris van Financiën

v

X BV (C-154/13),

Nobel Biocare Nederland BV (C-160/13),

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, S. Rodin, A. Borg Barthet (Rapporteur), M. Berger and F. Biltgen, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 19 May 2014,

after considering the observations submitted on behalf of:

— VDP Dental Laboratory NV, by R. Oorthuizen, belastingadviseur,

— Nobel Biocare Nederland BV, by G.C. Bulk, adviseur,

— the Netherlands Government, by M. Bulterman, M. Noort and J. Langer, acting as Agents,

* Language of the cases: Dutch.

— the Estonian Government, by N. Grünberg, acting as Agent,

— the European Commission, by A. Cordewener and E. Manhaeve, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 September 2014,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 17(1) and (2) of 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 2005/92/EC of 12 December 2005 (OJ 2005 L 345, p. 19) ('the Sixth Directive'), and of Articles 140(a) and (b) and 143(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2007/75/EC of 20 December 2007 (OJ 2007 L 346, p. 13) ('the VAT Directive'), read in conjunction with Articles 132(1)(e) and 370 of that directive.

2 The requests have been made in three sets of proceedings between VDP Dental Laboratory NV ('VDP') and the Staatssecretaris van Financiën (State Secretary for Finance) ('the Staatssecretaris') and between the Staatssecretaris and (i) X BV ('X') and (ii) Nobel Biocare Nederland BV ('Nobel') concerning the collection of value added tax ('VAT') for the financial years 2006 and 2008.

Legal context

EU law

3 The main proceedings relate to the collection of VAT for the financial years 2006 and 2008. As a result, the applicable directives are the Sixth Directive and the VAT Directive. Depending on the period concerned in the present cases, the relevant provisions as set out in the Sixth Directive or in the VAT Directive will be taken into account.

The Sixth Directive

4 Article 13A of the Sixth Directive, which relates to exemptions for certain activities in the public interest within the territory of the country, provides:

'1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

…

(e) services supplied by dental technicians in their professional capacity and dental prostheses supplied by dentists and dental technicians;

…'

5 Article 17 of that directive, in the version resulting from Article 28f thereof ('Article 17 of the Sixth Directive') and entitled 'Origin and scope of the right to deduct', provides in paragraphs 1 and 2:

'1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. 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) [VAT] due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

(b) [VAT] due or paid in respect of imported goods within the territory of the country;

(c) [VAT] due pursuant to Articles 5(7)(a), 6(3) and 28a(6);

(d) [VAT] due pursuant to Article 28a(1)(a).'

The VAT Directive

6 Article 131 of the VAT Directive states:

'The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.'

7 Article 132(1) of the VAT Directive — formerly Article 13A of the Sixth Directive — states:

'Member States shall exempt the following transactions:

…

(d) the supply of human organs, blood and milk;

(e) the supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians;

…'

8 Article 138(1) of the Vat Directive states:

'Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began.'

9 Article 140 of the VAT Directive provides:

'Member States shall exempt the following transactions:

(a) the intra-Community acquisition of goods the supply of which by taxable persons would in all circumstances be exempt within their respective territory;

(b) the intra-Community acquisition of goods the importation of which would in all circumstances be exempt under points (a), (b) and (c) and (e) to (l) of Article 143;

…'

10 Article 143(a) of the VAT Directive states:

'Member States shall exempt the following transactions:

(a) the final importation of goods of which the supply by a taxable person would in all circumstances be exempt within their respective territory'.

11 Article 167 of the VAT Directive reads as follows:

'A right of deduction shall arise at the time the deductible tax becomes chargeable.'

12 Article 168 of the VAT Directive — formerly Article 17(2) of the Sixth Directive — states:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

(b) the VAT due in respect of transactions treated as supplies of goods or services pursuant to Article 18(a) and Article 27;

(c) the VAT due in respect of intra-Community acquisitions of goods pursuant to Article 2(1)(b)(i);

(d) the VAT due on transactions treated as intra-Community acquisitions in accordance with Articles 21 and 22;

(e) the VAT due or paid in respect of the importation of goods into that Member State.'

13 The VAT Directive also provides for various '[d]erogations for States which were members of the Community on 1 January 1978', on the basis of, inter alia, Article 370 thereof, which states:

'Member States which, at 1 January 1978, taxed the transactions listed in Annex X, Part A, may continue to tax those transactions.'

14 Annex X to the VAT Directive, in part A, headed 'Transactions which Member States may continue to tax', refers, in paragraph 1, to:

'The supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians.'

15 Article 90 EC (now Article 110 TFEU) was worded as follows:

'No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.'

Netherlands law

16 Article 11(1)(g)(1) of the Law on Turnover Tax (Wet op de omzetbelasting) of 28 June 1968 (*Staatsblad* 1968, No 329; 'the VAT Code'), in the version in force from 1 January 2003 to 1 January 2007, states:

'The following shall be exempt from VAT under conditions to be laid down by general administrative order:

the services provided by professionals whose profession is governed by or in accordance with the Law on professions in the personal health sector [Wet op de beroepen in de individuele gezondheidszorg]; the services supplied by psychologists and dental technicians; supplies of dental prostheses; the supply of transport services for sick or injured persons by ambulance.'

17 In the version in force in 2008, the first subparagraph of Article 11(1)(g) of that code is worded as follows:

'The following shall be exempt from VAT under conditions to be laid down by general administrative order:

medical treatment of humans within the context of the exercise of medical and paramedical professions governed by or in accordance with the Law on professions in the personal health sector and the treatment of individuals by psychologists; the services supplied by dental technicians in that capacity; supplies of dental prostheses by dentists and dental technicians; the supply of transport services for sick or injured persons by ambulance.'

18 Article 15(2) of that code, in the version in force in 2006, lays down the following rules:

'In so far as the goods and services are used for the purposes of services of traders within the meaning of Articles 11 and 28k, the deduction of tax may take place only if it concerns services referred to in Article 11(i), (j) and (k), on condition that the purchaser of those services resides or is established outside the Community or on condition that those services relate directly to goods to be exported outside the Community.'

19 Article 17e of the VAT Code states:

'By ministerial decree, subject to the conditions and restrictions laid down therein, exemption from tax shall be granted for intra-Community acquisitions of goods in respect of which:

a. the supply in the Netherlands is in all circumstances exempt;

b. an exemption would apply in all circumstances at the time of importation;

c. a right to a full refund would exist in all circumstances.'

20 Article 21(c) of the VAT Code states:

‘By ministerial decree, subject to the conditions and restrictions laid down therein, exemption from tax shall be granted for:

…

c. the importation of goods the supply of which in the Netherlands is in all circumstances exempt.’

21 Article 16a(1)(a) of the decree implementing the VAT Code states:

‘The following are designated as intra-Community acquisitions within the meaning of Article 17e:

(a) intra-Community acquisitions of human organs, human blood and human milk.’

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-144/13

22 The dispute in the main proceedings in Case C-144/13 concerns VDP, which is established in the Netherlands and is an intermediary in the sale of dental prostheses. On receipt of prior orders from dentists established in the Netherlands or outside that Member State, it arranges for prostheses to be manufactured by dental laboratories which have the status of dental technicians and are established outside the Netherlands and both within and outside the European Union. The laboratories concerned supply the dental prostheses to VDP, which in turn sends them to the dentists who ordered them. The dental prostheses which VDP receives from countries which do not belong to the customs territory of the European Union are declared on their arrival in the Netherlands for the purpose of their release for free circulation.

23 In its VAT return for the first quarter of 2006, VDP declared, as regards the supplies of dental prostheses effected during that period to dentists established in the Netherlands, that the supplies in question were exempt from VAT, in accordance with the first subparagraph of Article 11(1)(g) of the VAT Code, in the version in force until 1 January 2008. VDP also deducted the VAT which it had been charged during that quarter in respect of the supplies of the prostheses concerned, relying on the interpretation of Article 17(2) of the Sixth Directive given by the Court in its judgment in *VDP Dental Laboratory* (C-401/05, EU:C:2006:792). The Tax Inspectorate refused that deduction on the basis of Article 15(2) of the VAT Code and dismissed the objection lodged by VDP.

24 In respect of the supplies of dental prostheses made to dentists established in the Netherlands in the third quarter of 2008, VDP paid no VAT pursuant to its tax returns, relying on the fact that it had, since 1 January 2008, the status of ‘dental technician’ within the meaning of Article 132(1)(e) of the VAT Directive, and taking the view, therefore, that it was entitled to an exemption in accordance with the first subparagraph of Article 11(1)(g) of the VAT Code. In accordance with Article 15(2) of that code, VDP did not deduct the tax which had been charged to it during that quarter in respect of the supplies in question.

25 In addition, for that quarter, VDP declared and paid the tax in respect of the importation and the intra-Community acquisition of dental prostheses from laboratories established outside the Netherlands. However, it subsequently took the view that it was not liable to pay that tax so far as concerns the importation of the declared prostheses, in accordance with Article 21(c) of the VAT Code, read in conjunction with Article 143(a) of the VAT Directive, and so far as concerns the

intra-Community acquisitions of such prostheses, in accordance with Article 17e(a) of the VAT Code, read in conjunction with Article 140(a) of the VAT Directive. The objection lodged by VDP in this regard was also rejected by the Tax Inspectorate.

26 With regard to the first quarter of 2006, the Rechtbank te Haarlem (District Court, Haarlem) dismissed VDP's action and held that the application of the exemption in accordance with Article 11(1)(g) of the VAT Code meant that, pursuant to Article 15(2) of the VAT Code, input tax could not be deducted. VDP brought an appeal on a point of law against the decision of that court.

27 With regard to the third quarter of 2008, the Rechtbank te Haarlem considered that the action brought by VDP was well founded and held that, in accordance, firstly, with Article 21(c) of the VAT Code, read in conjunction with Article 143(a) of the VAT Directive, and, secondly, with Article 17e(a) of the VAT Code, read in conjunction with Article 140(a) of the VAT Directive, no VAT was payable on the importation and intra-Community acquisition of dental prostheses, since the basis was still a supply effected by a foreign dental technician, and such a supply in the Netherlands was exempt. The Staatssecretaris brought an appeal on a point of law against that decision.

28 According to the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), both the appeal brought by VDP and that brought by the Staatssecretaris give rise to questions of European Union law.

29 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Should Article 17(1) and (2) of the Sixth Directive be interpreted to mean that if a national statutory provision, contrary to the Directive, provides for an exemption (in respect of which the right to deduct is excluded), the taxable person is entitled to the right to deduct in reliance on Article 17(1) and (2) of the Sixth Directive?

(2) Should Article 143(a) and Article 140(a) and (b) of the [VAT Directive] be interpreted to mean that the exemptions from VAT contained in those provisions do not apply to the importation and the intra-Community acquisition of dental prostheses? If the answer to that question is in the negative, is the application of the exemptions then subject to the condition that the dental prostheses must have been supplied from another country by a dentist or dental technician and/or supplied to a dentist or dental technician?'

Case C-154/13

30 Case C-154/13 concerns X, which is established in the Netherlands and operates a dentistry practice, the activities of which are, in accordance with the first subparagraph of Article 11(1)(g) of the VAT Code, exempt from VAT without the right to deduct. During the period from 1 January 2008 to 30 September 2008, X acquired, from a dental technician established in Germany, dental prostheses which were transported and supplied to X from Germany without VAT invoicing. X did not pay VAT pursuant to its tax returns in respect of intra-Community acquisitions concerning those purchases. The Tax Inspectorate takes the view that intra-Community acquisitions are nevertheless involved and issued a notice of additional assessment.

31 The Rechtbank te 's-Gravenhage (District Court, The Hague) declared X's action to be well founded. According to that court, Article 17e of the VAT Code and Article 140 of the VAT Directive must be interpreted as meaning that, in the case of a supply of a dental prosthesis by a dentist or a dental technician established outside the Netherlands, the corresponding intra-Community acquisition by a

client in the Netherlands is exempt from VAT, given that such a supply is also exempt when it is made in the Netherlands. The Staatssecretaris brought an appeal on a point of law against that decision and referred to, inter alia, the liability to tax of supplies of dental prostheses in Germany.

32 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 140(a) and (b) of the [VAT Directive] be interpreted as meaning that the exemption from VAT for which that provision provides does not apply to the intra-Community acquisition of dental prostheses? If the answer is no, is the application of the exemption subject to the condition that the dental prostheses are supplied from abroad by a dentist and/or dental technician to a dentist or dental technician?

(2) If the exemption from VAT (whether or not under the conditions described in Question 1) for which Article 140(a) and (b) of the [VAT Directive] provides applies to the intra-Community acquisition of dental prostheses, does the exemption therefore apply in Member States, such as the Netherlands, which have complied with the exemption provided for in Article 132 of the [VAT Directive], to the intra-Community acquisition of dental prostheses originating from a Member State which has taken advantage of the derogating and transitional arrangements for which Article 370 of the [VAT Directive] provides?'

Case C-160/13

33 Case C-160/13 concerns Nobel, which is established in the Netherlands and has the status of dental technician within the meaning of the first subparagraph of Article 11(1)(g) of the VAT Code. Nobel is an intermediary in the sale of dental prostheses. On receipt of prior orders it sells and supplies those prostheses to dental laboratories established in the Netherlands. The dental prostheses are manufactured in Sweden by Nobel's parent company, A AB ('A'), which is also a dental technician. A supplies the prostheses, in return for an agreed remuneration, to Nobel, which then supplies those prostheses to the abovementioned laboratories.

34 In the case of the dental prostheses supplied in December 2008, A did not charge VAT. As regards those supplies, Nobel entered in its return VAT in respect of the intra-Community acquisitions. It then submitted an objection in that connection. The Rechtbank te Haarlem ruled in its favour and held that Article 17e of the VAT Code and Article 140 of the VAT Directive had to be interpreted as meaning that, in the case of a supply of a dental prosthesis by a dentist or a dental technician established outside the Netherlands, the corresponding intra-Community acquisition by a client in the Netherlands was exempt from VAT, given that such a supply is also exempt when it is made in the Netherlands. The Staatssecretaris brought an appeal on a point of law against the decision of that court.

35 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 140(a) and (b) of the [VAT Directive] be interpreted as meaning that the exemption from VAT for which that provision provides does not apply to the intra-Community acquisition of dental prostheses? If the answer is no, is the application of the exemption subject to the condition that the dental prostheses are supplied from abroad by a dentist and/or dental technician to a dentist or dental technician?'

36 By order of the President of the Court of 4 June 2013, Cases C-144/13, C-154/13 and C-160/13 were joined for the purposes of the written and oral procedure and the judgment.

The questions referred for a preliminary ruling

The first question in Case C-144/13

37 By its first question in Case C-144/13, the referring court asks, in essence, whether Article 168 of the VAT Directive, which reproduces the content of Article 17(2) of the Sixth Directive, must be interpreted as meaning that, where an exemption provided for by national law is incompatible with the VAT Directive, Article 168 of that directive does not permit a taxable person both to benefit from that exemption and to exercise the right to deduct tax.

38 The Court has already had occasion to rule that, where an exemption provided for by national law is incompatible with the VAT Directive, Article 168 of that directive does not permit a taxable person both to benefit from that exemption and to exercise the right to deduct tax (judgment in *MDDP*, C-319/12, EU:C:2013:778, paragraph 45).

39 As the Advocate General observed in point 37 of her Opinion, in such a situation, the only choice open to a taxable person is either to avail himself of the national tax exemption, thus ruling out the right to deduct, or to subject his transactions to VAT in accordance with EU law, thus rendering himself subsequently eligible to deduct input tax.

40 Consequently, the answer to the first question in Case C-144/13 is that Article 168 of the VAT Directive must be interpreted as meaning that, where the exemption from VAT provided for by national law is incompatible with the VAT Directive, Article 168 does not permit a taxable person both to benefit from that exemption and to exercise the right to deduct.

The second question in Case C-144/13, the first question in Case C-154/13 and the question in Case C-160/13

41 By its second question in Case C-144/13, its first question in Case C-154/13 and its question in Case C-160/13, the referring court asks, in essence, whether the VAT exemption provided for in Article 140(a) and (b) and Article 143(a) of the VAT Directive applies to the intra-Community acquisition and the importation of dental prostheses, and whether, depending on the circumstances, the application of that exemption is subject to the condition that the dental prostheses have been supplied from another Member State or a third country by a dentist or dental technician and/or supplied to a dentist or dental technician.

42 It must be noted that Articles 132, 140 and 143 of the VAT Directive form part of the system of exemption provided for in Title IX of the VAT Directive under the title ‘Exemptions’. Those provisions set out an exemption mechanism for transactions relating to specific goods, when certain conditions are satisfied.

43 The purpose of the exemptions provided for in Article 132(1) of the VAT Directive is to facilitate access to certain services and the supply of certain goods by avoiding the increased costs that would result if they were subject to VAT (see, to that effect, judgments in *Commission* v *Germany*, C-287/00, EU:C:2002:388, paragraph 47, and in *MDDP*, EU:C:2013:778, paragraph 26).

44 It is settled case-law that those exemptions constitute independent concepts of EU law the purpose of which is to avoid divergences in the application of the VAT system from one Member State to another (see, inter alia, judgments in *CPP*, C-349/96, EU:C:1999:93, paragraph 15, and in *Skandia*, C-240/99, EU:C:2001:140, paragraph 23).

45 It must also be remembered that the aim of Article 132 of the VAT Directive is to exempt from VAT certain activities which are in the public interest. That provision does not, however, provide exemption from VAT for every activity performed in the public interest, but only for those which are listed therein and described in great detail (judgment in *Institute of the Motor Industry*, C-149/97, EU:C:1998:536, paragraph 18).

46 The exemption of the supply of dental prostheses made by dentists and dental technicians is intended to ensure that the supply of health-related products does not become inaccessible by reason of the increased costs of those products if their supply were subject to VAT (see, concerning Article 13A(1)(b) of the Sixth Directive, now Article 132(1)(b) of the VAT Directive, judgment in *Commission* v *France*, C-76/99, EU:C:2001:12, paragraph 23).

47 Article 140(a) of the VAT Directive, for its part, requires Member States to exempt the intra-Community acquisition of goods the supply of which by taxable persons would in all circumstances be exempt within their respective territory.

48 As a preliminary point, it should be noted, as observed by the Advocate General in point 45 of her Opinion, that the phrase 'in their respective territory' refers to the Member State of importation. That is clear from a comparison with provisions such as Articles 88, 207 or 214(1)(a) of the VAT Directive, which contain the same phrase.

49 Thus, in order to determine whether an intra-Community acquisition of goods is exempt from VAT, it is necessary to establish whether the supply of those same goods is exempt within the territory of the Member State of destination.

50 In the cases in the main proceedings, the intra-Community acquisitions of dental prostheses could fall within the scope of Article 140(a) of the VAT Directive, and thus qualify for an exemption, if they are exempt within the territory of the Member State of destination. Since Article 132(1)(e) of that directive requires Member States to exempt the supply of dental prostheses by dentists and dental technicians, the supply within the territory of a Member State of that product will necessarily be exempt, provided that the Member State has not implemented the transitional rules provided for in Article 370 of the VAT Directive.

51 Consequently, the intra-Community acquisitions of dental prostheses by dentists and dental technicians fall within the scope of Article 140(a) of the VAT Directive.

52 It must also be stated that the exemption of the final importation of goods provided for in Article 143(a) of the VAT Directive is clearly based on Article 140(a) of that directive, with the difference that the transactions affected by the exemption are the final importations of goods.

53 In order to determine whether an importation of goods is exempt from VAT, it is necessary to ascertain whether the supply of those same goods is exempt within the territory of the Member State of destination. It is apparent from the wording of the provisions at issue that the EU legislature has provided for an identical mechanism for Articles 140(a) and 143(a) of the VAT Directive.

54 It follows that those provisions must be interpreted in the same way.

55 Since the reference factor is the existence of an exemption for the supply of the goods in the Member State of destination, so far as concerns dental prostheses, reference must be made to the exemption provided for in Article 132(1)(e) of the VAT Directive under the same conditions as for Article 140(a) of that directive. Thus, the final importation of dental prostheses made by dentists and dental technicians falls within the scope of Article 143(a) of that directive.

56 As regards Article 140(b) of the VAT Directive, in order to determine whether an intra-Community acquisition of goods qualifies for an exemption in a Member State, it will be sufficient to ascertain whether the final importation of those goods within the territory of that Member State is entitled to an exemption under Article 143(a) of that directive.

57 As regards the question relating to the conditions necessary for entitlement to the exemption, it should be stated that it follows from the actual wording of Article 132(1)(e) of the VAT Directive that that entitlement is subject to the condition that the dental prostheses are supplied by dentists or dental technicians.

58 Consequently, the answer to the second question in Case C-144/13, the first question in Case C-154/13 and the question in Case C-160/13 must be that Article 140(a) and (b) and Article 143(a) of the VAT Directive must be interpreted as meaning that the exemption from VAT for which they provide applies to the intra-Community acquisition and the final importation of dental prostheses supplied by dentists and dental technicians where the Member State of the supply or importation has not implemented the transitional rules provided for in Article 370 of that directive.

The second question in Case C-154/13

59 By its second question in Case C-154/13, the referring court asks, in essence, whether Article 140(a) and (b) of the VAT Directive must be interpreted as meaning that the exemption from VAT provided for in that provision also applies where the intra-Community acquisition of dental prostheses originates from a Member State which has implemented the derogating and transitional arrangements provided for in Article 370 of the VAT Directive.

60 It must be borne in mind that the Community system of VAT is the result of a gradual harmonisation of national legislation pursuant to Articles 113 TFEU and 115 TFEU. The Court has consistently held that this harmonisation, as brought about by successive directives and in particular by the Sixth Directive, is still only partial (judgments in *ORO Amsterdam Beheer and Concerto*, C-165/88, EU:C:1989:608, paragraph 21, and in *Eurodental*, C-240/05, EU:C:2006:763, paragraph 50).

61 The VAT Directive, by virtue of Article 370 thereof, authorised the Member States to retain certain provisions of their national legislation predating that directive which would, without that authorisation, be incompatible with that directive (see, to that effect, judgments in *Idéal tourisme*, C-36/99, EU:C:2000:405, paragraph 38, and in *Eurodental*, EU:C:2006:763, paragraph 51).

62 Thus, it is apparent from the answer given to the second question in Case C-144/13, the first question in Case C-154/13 and the question in Case C-160/13 that, in order to determine whether an intra-Community acquisition of dental prostheses qualifies for an exemption, it is necessary to ascertain whether the supply or importation of those goods is exempt within the territory of the Member State of destination. It follows that the reference factor is the arrangement applicable in the Member State of destination.

63 Where that State has not implemented the derogating and transitional arrangements provided for in Article 370 of the VAT Directive, and therefore applies the exemption provided for in Article 132(1)(e) of that directive, the exemptions provided for in Article 140(a) and (b) of that directive will also apply. This is so regardless of whether the Member State of origin makes use of those derogating and transitional arrangements laid down in Article 370 of the VAT Directive.

64 Consequently, the answer to the second question in Case C-154/13 must be that Article 140(a) and (b) of the VAT Directive must be interpreted as meaning that the exemption from VAT provided for in that provision also applies where the intra-Community acquisition of dental prostheses originates from a Member State which has implemented the derogating and transitional arrangements provided for in Article 370 of the VAT Directive.

Costs

65 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decisions on costs are a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2007/75/EC of 20 December 2007, must be interpreted as meaning that, where the exemption from value added tax provided for by national law is incompatible with Directive 2006/112, as amended by Directive 2007/75, Article 168 does not permit a taxable person both to benefit from that exemption and to exercise the right to deduct tax.**

2. **Article 140(a) and (b) and Article 143(a) of Directive 2006/112, as amended by Directive 2007/75, must be interpreted as meaning that the exemption from value added tax for which they provide applies to the intra-Community acquisition and the final importation of dental prostheses supplied by dentists and dental technicians where the Member State of the supply or importation has not implemented the transitional rules provided for in Article 370 of Directive 2006/112, as amended by Directive 2007/75.**

3. **Article 140(a) and (b) of Directive 2006/112, as amended by Directive 2007/75, must be interpreted as meaning that the exemption from value added tax provided for in that provision also applies where the intra-Community acquisition of dental prostheses originates from a Member State which has implemented the derogating and transitional arrangements provided for in Article 370 of that directive.**

[Signatures]