



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

18 September 2019*

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 132(1)(b) and (c) — Exemptions — Hospital and medical care — Provision of medical care in the exercise of the medical and paramedical professions — No confidential relationship between the person providing the care and the patient)

In Case C-700/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Federal Finance Court, Germany), made by decision of 11 October 2017, received at the Court on 14 December 2017, in the proceedings

Finanzamt Kyritz

v

Wolf-Henning Peters,

THE COURT (Sixth Chamber),

composed of C. Toader, President of the Chamber, L. Bay Larsen (Rapporteur) and M. Safjan, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the German Government, initially by T. Henze and R. Kanitz, and subsequently by R. Kanitz, acting as Agents,
- the European Commission, by B.-R. Killmann and J. Jokubauskaitė, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 132(1)(b) and (c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
- 2 The request has been made in proceedings between the Finanzamt Kyritz (Kyritz Tax Office, Germany; ‘the Tax Office’) and Mr Wolf-Henning Peters concerning the refusal to exempt from value added tax (‘VAT’) the medical care provided by the latter as a specialist in clinical chemistry and laboratory diagnostics.

Legal context

Directive 2006/112

- 3 Recital 7 of Directive 2006/112 states:

‘The common system of VAT should, even if rates and exemptions are not fully harmonised, result in neutrality in competition, such that within the territory of each Member State similar goods and services bear the same tax burden, whatever the length of the production and distribution chain.’

- 4 Article 132(1) of the directive is worded as follows:

‘Member States shall exempt the following transactions:

...

- (b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;
- (c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

...’

- 5 Article 133 of the directive provides:

‘Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1) subject in each individual case to one or more of the following conditions:

- (a) the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied;
- (b) those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;

- (c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT;
- (d) the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.

...'

German law

- 6 Paragraph 4 of the Umsatzsteuergesetz (Law on turnover tax, 'the UStG') of 21 February 2005 (BGBl. 2005 I, p. 386) as amended by the Law of 19 December 2008 (BGBl. 2008 I, p. 2794) provides:

'Of the transactions falling within the scope of Paragraph 1(1)(1) the following shall be exempt from tax:

...

- (14) (a) the provision of medical care in the exercise of the profession of doctor, dentist, lay medical practitioner, physiotherapist, midwife or a similar healthcare profession. ...

- ...
- (b) hospital and medical care including diagnosis, medical assessment, prevention, rehabilitation, obstetrics and hospice services and closely related activities undertaken by bodies governed by public law. The services referred to in the first sentence shall also be exempt from tax if they are provided by

- ...
- (bb) centres for medical care and diagnosis, which participate in contractual medical care under Paragraph 95 of the Fifth Book of the Sozialgesetzbuch (Social Security Code) or which fall within the provisions of Paragraph 115 of the Fifth Book of the Social Security Code,

...

and, depending on their nature, if they are services to which the authorisation, the contract, or the provision under the Social Security Code respectively relates ...'

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

- 7 Mr Peters is a medical specialist in clinical chemistry and laboratory diagnostics.
- 8 In the tax years 2009 to 2012, he provided medical care services to LADR Medizinisches Versorgungszentrum Wittstock GmbH, a laboratory company supplying laboratory services for doctors working in medical practices, rehabilitation clinics, public health services and hospitals.
- 9 He received monthly remuneration of EUR 6 000 for those services, which included in particular providing evaluation services aimed at specific laboratory physician diagnoses as well as medical assistance in transfusion medicine measures in specific treatment scenarios.

- 10 Mr Peters did not make any turnover tax declarations for the tax years concerned, and considers that those services were exempt from that tax by virtue of the first sentence of Paragraph 4(14)(a) of the UStG.
- 11 By contrast, the Tax Office considered that the same services were taxable. The ground for that decision was the statement that the exemption provided for in the first sentence of Paragraph 4(14)(a) of the UStG is subject to the condition that a confidential relationship between the doctor and the person being treated exists, which is not the case for the services of clinical chemists and laboratory physicians. It therefore issued flat-rate turnover tax assessment notices on the basis of the net fees received by Mr Peters for the tax years concerned.
- 12 In a decision of 2 December 2013, the Tax Office rejected Mr Peters' complaints against the notices.
- 13 Mr Peters brought an action against that decision before the Finanzgericht Berlin-Brandenburg (Finance Court, Berlin-Brandenburg, Germany), which upheld his action and amended the tax notices at issue, considering that the tax exemption provided for in the first sentence of Paragraph 4(14)(a) of the UStG does not require the existence of a confidential relationship between the doctor and person being treated.
- 14 The Tax Office brought an appeal on a point of law ('Revision') before the referring court.
- 15 That court considers that the factor of a confidential relationship has no decisive significance as regards the place where the service is provided, which determines, according to the Court of Justice case-law, the distinction between the exemptions provided for in Article 132(1)(b) and (c) of Directive 2006/112. Moreover, according to the referring court, the existence of a confidential relationship between doctor and patient is not a prerequisite for the exemption of an activity in the context of providing medical care for the purposes of the provision of German law transposing Article 132(1)(c) of that directive, such a confidential relationship being merely the typical case of application of the exemption provision.
- 16 In those circumstances the Bundesfinanzhof (Federal Finance Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) Is the tax exemption for the provision of medical care by a specialist in clinical chemistry and laboratory diagnostics, in circumstances like those of the main proceedings, assessed under Article 132(1)(c) or under Article 132(1)(b) of [Directive 2006/112]?
- (2) Does the applicability of Article 132(1)(c) of [Directive 2006/112] — if this provision is applicable — require that a confidential relationship exist between the doctor and the person being treated?'

Consideration of the questions referred

The first question

- 17 By its first question, the referring court asks, in essence, whether Article 132(1)(b) and (c) of Directive 2006/112 must be interpreted as meaning that the provision of medical care such as that at issue in the main proceedings, supplied by a medical specialist in clinical chemistry and laboratory diagnostics, is capable of falling within the exemption from VAT under Article 132(1)(c) of that directive.

- 18 It must be noted at the outset that Article 13(A)(1)(b) and (c) 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, ‘the Sixth Directive’) and Article 132(1)(b) and (c) of Directive 2006/112, having an essentially identical wording, must be interpreted in the same way and that consequently the case-law of the Court on the first of these provisions lends itself to serving as a basis for the interpretation of the second provision (see, to that effect, judgment of 10 June 2010, *Future Health Technologies*, C-86/09, EU:C:2010:334, paragraph 27).
- 19 According to Article 132(1)(b) of Directive 2006/112, Member States are to exempt hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature. Article 132(1)(c) provides for the exemption of the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned.
- 20 It is clear from the case-law of the Court that the concept of ‘medical care’ in Article 132(1)(b) of Directive 2006/112 and that of ‘the provision of medical care’ within the meaning of Article 132(1)(c) are both intended to cover services that have as their aim the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders (judgment of 2 July 2015, *De Fruytier*, C-334/14, EU:C:2015:437, paragraph 20 and the case-law cited).
- 21 It is also important to note that the criterion for drawing a clear distinction between the two tax exemptions under those provisions is less the nature of the service than the place where it is provided. Article 132(1)(b) of the directive covers all services supplied in a hospital environment while Article 132(1)(c) thereof covers services provided outside such a framework, both at the private address of the person providing the care and at the patient’s home or at any other place (see, to that effect, judgment of 8 June 2006, *L.u.P.*, C-106/05, EU:C:2006:380, paragraph 22 and judgment of 2 July 2015, *De Fruytier*, C-334/14, EU:C:2015:437, paragraph 19).
- 22 It is clear from the order for reference that the first question concerns the provision of medical care, which implies that those services may fall under the concept of ‘medical care’ within the meaning of Article 132(1)(b) of Directive 2006/112 or under the concept of ‘the provision of medical care’ within the meaning of Article 132(1)(c) of that directive.
- 23 With regard to the application of Article 132(1)(b) of the directive to such services, the Court has already held that a laboratory or an individualised entity performing a comparable function is capable of constituting an establishment ‘of a similar nature’ to ‘hospitals’ and ‘centres for medical treatment or diagnosis’ within the meaning of Article 132(1)(b) of Directive 2006/112 (see, to that effect, judgment of 2 July 2015, *De Fruytier*, C-334/14, EU:C:2015:437, paragraph 35 and the case-law cited).
- 24 That being said, in order to determine whether medical care is exempt from VAT pursuant to Article 132(1)(b) or (c) of the directive, account must be taken of all the requirements laid down in that provision and in the other relevant provisions of Title IX, Chapters 1 and 2 of the directive (see, to that effect, judgment of 21 March 2013, *PFC Clinic*, C-91/12, EU:C:2013:198, paragraph 37 and the case-law cited).
- 25 Further, Article 133 of Directive 2006/112 allows Member States to make the granting of the exemption provided for in Article 132(1)(b) to bodies other than those governed by public law subject to compliance with one or more of the conditions referred to therein.

- 26 In that context, the referring court asks, more specifically, about the possibility that Article 132(1)(c) of Directive 2006/112 may be applicable to the supply of services such as those in the main proceedings, in the event that the referring court were to conclude that those services do not meet all the conditions for applying the exemption under Article 132(1)(b) of the directive.
- 27 In that regard, it must be stated that the provision of medical care which does not meet all the requirements laid down in order to benefit from the exemption from VAT under Article 132(1)(b) of the directive is not, as a matter of principle, excluded from the exemption laid down in Article 132(1)(c) of that directive.
- 28 It is in no way apparent from the wording of Article 132(1)(b) of Directive 2006/112 that that provision is intended to limit the scope of Article 132(1)(c) of the directive, which concerns, as has been noted in paragraph 21 of the present judgment, services provided outside of the structures falling under Article 132(1)(b) of that directive, in the context of the exercise of medical and paramedical professions as defined by the Member States.
- 29 Moreover, the Court has stated that, it would be contrary to the principle of fiscal neutrality to make medical tests prescribed by general practitioners subject to a different VAT scheme depending on where they are carried out when they are equivalent from a qualitative point of view in the light of the professional qualifications of the service providers in question (see, to that effect, judgment of 8 June 2006, *L.u.P.*, C-106/05, EU:C:2006:380, paragraph 32).
- 30 Therefore, the answer to the first question is that Article 132(1)(b) and (c) of Directive 2006/112 must be interpreted as meaning that the provision of medical care such as that at issue in the main proceedings, supplied by a medical specialist in clinical chemistry and laboratory diagnostics, is capable of falling within the scope of the exemption under Article 132(1)(c) of that directive, where it fails to meet all the conditions for the application of the exemption under Article 132(1)(b) of the directive.

The second question

- 31 By its second question, the referring court asks, in essence, if Article 132(1)(c) of Directive 2006/112 must be interpreted as meaning that the exemption from VAT that it provides for is subject to the condition that the medical care in question is supplied within the framework of a confidential relationship between the patient and the person providing the care.
- 32 In that regard, it must be noted that it follows from a literal interpretation of Article 132(1)(c) of the directive that the supply of a service must be exempt if it satisfies two conditions, namely, first, that it constitutes provision of medical care and, second, that it is carried out in the exercise of the medical and paramedical professions as defined by the Member State concerned (see, to that effect, judgment of 10 September 2002, *Kügler*, C-141/00, EU:C:2002:473, paragraph 27 and judgment of 27 April 2006, *Solleveld and van den Hout-van Eijnsbergen*, C-443/04 and C-444/04, EU:C:2006:257, paragraph 23).
- 33 It does not in any way follow from the wording of that provision that, in order for the provision of medical care to be exempt, it must be supplied within the framework of a confidential relationship between the person providing the care and the person being treated.
- 34 Moreover, to add such a condition is unwarranted in light of the objective of that provision of reducing the cost of medical care and making that care more accessible to individuals (see, to that effect, judgment of 13 March 2014, *Klinikum Dortmund*, C-366/12, EU:C:2014:143, paragraph 28 and the case-law cited), to the extent that those services are of sufficient quality (see, to that effect, judgment of

27 April 2006, *Solleveld and van den Hout-van Eijnsbergen*, C-443/04 and C-444/04, EU:C:2006:257, paragraph 37), without the existence of a confidential relationship between the patient and the person providing the care being decisive in that regard.

- 35 It is true that the Court has held that, in contrast to Article 13(A)(1)(b) of the Sixth Directive, the exemption laid down in Article 13(A)(1)(c) of that directive applies to services provided outside hospitals and similar establishments and within the framework of a confidential relationship between the patient and the person providing the care, a relationship which is normally established in the consulting room of that person (see, to that effect, judgment of 23 February 1988, *Commission v United Kingdom*, 353/85, EU:C:1988:82, paragraph 33 and judgment of 10 September 2002, *Kügler*, C-141/00, EU:C:2002:473, paragraph 35).
- 36 However, it cannot follow from those findings that the exemption under Article 132(1)(c) of Directive 2006/112 applies only to the provision of medical care within the framework of a confidential relationship between the person providing the care and the person being treated.
- 37 It must be noted that the purpose of those findings was merely to highlight the difference between that provision and Article 13(1)(b) of the Sixth Directive with respect to defining the field of application of the two exemptions laid down in those provisions.
- 38 Thus, in paragraph 33 of the judgment of 23 February 1988, *Commission v United Kingdom* (353/85, EU:C:1988:82), it was in reply to the argument raised by the United Kingdom of Great Britain and Northern Ireland to the effect that there is a parallel between Article 13(A)(1)(b) and Article 13(A)(1)(c) of the Sixth Directive that the Court emphasised the importance of the confidential relationship between the patient and the person providing the care, concluding that, apart from minor provisions of goods which are strictly necessary at the time when the care is provided, the supply of medicines and other goods is physically and economically dissociable from the provision of the services under Article 13(A)(1)(c) of that directive.
- 39 Similarly, the existence of a confidential relationship between the patient and the person providing the care was raised by the Court in paragraph 35 of judgment of 10 September 2002, *Kügler* (C-141/00, EU:C:2002:473), in order to highlight the difference between the two exemptions under Article 13(A)(1)(b) and (c) of the Sixth Directive as regards the place where the services must be supplied, illustrating the framework within which the services under Article 13(A)(1)(c) of that directive are generally provided.
- 40 In that regard, in paragraph 36 of that judgment, the Court stated that Article 13(A)(1)(b) of the Sixth Directive exempts all services supplied in a hospital environment while Article 13(A)(1)(c) thereof is designed to exempt medical services provided outside such a framework, both at the private address of the person providing the care and at the patient's home or at any other place.
- 41 Further, although the Court set out, in paragraph 27 of that judgment, the conditions to which the exemption referred to in that provision is subject, it did not refer, in that regard, to the existence of a confidential relationship between the patient and the person providing the care.
- 42 It follows that the answer to the second question is that Article 132(1)(c) of Directive 2006/112 must be interpreted as meaning that the exemption from VAT that it provides for is not subject to the condition that the medical care in question is supplied within the framework of a confidential relationship between the patient and the person providing the care.

Costs

- 43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is 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 (Sixth Chamber) hereby rules:

1. **Article 132(1)(b) and (c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the provision of medical care such as that at issue in the main proceedings, supplied by a medical specialist in clinical chemistry and laboratory diagnostics, is capable of falling within the scope of the exemption from VAT under Article 132(1)(c) of that directive, where it fails to meet all the conditions for the application of the exemption under Article 132(1)(b) of the directive.**
2. **Article 132(1)(c) of Council Directive 2006/112 must be interpreted as meaning that the exemption from VAT that it provides for is not subject to the condition that the medical care in question is supplied within the framework of a confidential relationship between the patient and the person providing the care.**

[Signatures]