

& Excise and CSC Financial Services Ltd, on the interpretation of Article 13B(d)(5) 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 Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, A. La Pergola, L. Sevón (Rapporteur), M. Wathelet and C.W.A. Timmermans, Judges, Advocate General: D. Ruiz-Jarabo Colomer, Registrar: D. Louterman-Hubeau, Head of Division, has given a judgment on 13 December 2001, in which it has ruled:

*On a proper construction of Article 13B(d)(5) 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*

- ‘transactions in securities’ means transactions liable to create, alter or extinguish parties’ rights and obligations in respect of securities;
- ‘negotiation in securities’ does not cover services limited to providing information about a financial product and, as the case may be, receiving and processing applications for subscription to the relevant securities, without issuing them.

(<sup>1</sup>) OJ C 233 of 12.8.2000.

## JUDGMENT OF THE COURT

(First Chamber)

13 December 2001

**in Case C-107/01: Commission of the European Communities v Grand Duchy of Luxembourg** (<sup>1</sup>)

*(Failure by a Member State to fulfil its obligations — Directive 98/76/EC — Failure to transpose within the prescribed period)*

(2002/C 56/03)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-107/01: Commission of the European Communities (Agent: M. Wolcarius) v Grand Duchy of Luxembourg (Agent: J. Faltz) — application for a declaration that by failing to adopt the laws, regulations and administrative provisions necessary

to comply with Council Directive 98/76/EC of 1 October 1998 amending Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations (OJ 1998 L 277, p. 17) or, in any event, by not notifying those provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, L. Sevón and M. Wathelet, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 13 December 2001, in which it:

1. Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 98/76/EC of 1 October 1998 amending Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.
2. Orders the Grand Duchy of Luxembourg to pay the costs.

(<sup>1</sup>) OJ C 118 of 21.4.2001.

**Reference for a preliminary ruling by the Arios Pagos (Greece) by order of 10 July 2001 in the case of Alexandros K. Kefalas and Others against (1) Elliniko Dimosio (the Greek State), (2) Organismos Ikonimikis Anasigkrotisis Epikhirision AE, legally represented by the liquidator, Ethniki Kefalaïou Anonimi Etairia Diakhrisis Energitikou kai Pathitikou, (3) Athinaiki Khartopiia AE, and (4) Georgios I. Tsamasfiros and Others**

(Case C-303/01)

(2002/C 56/04)

Reference has been made to the Court of Justice of the European Communities by order of the Arios Pagos (Greek Supreme Court) of 10 July 2001, received at the Court Registry on 30 July 2001, for a preliminary ruling in the case of Alexandros K. Kefalas and Others against (1) Elliniko Dimosio

(the Greek State), (2) Organismos Ikonomikis Anasigkrotisis Epikhirision AE, legally represented by the liquidator, Ethniki Kefalaiou Anonimi Etairia Diakhrisis Energitikou kai Pathitikou, (3) Athinaiki Khartopiia AE, and (4) Georgios I. Tsamasfiros and Others on the following question:

In view of the fact that Article 25 of the Second Council Directive 77/91/EEC<sup>(1)</sup> of 13 December 1976 does not lay down a penalty for any infringement of that article, is it compatible with the objectives pursued by that directive for a provision of national law to declare valid shares which have resulted from an increase, pursuant to ministerial decisions, in the share capital of public limited companies where the increase is invalid as contrary to Article 25 of the directive, provided that the provision confers, in return, a right against the State to full compensation for any harm which the pre-existing shareholders of those public limited companies have suffered as a consequence of the increase. In particular, may that right to full compensation be regarded, in view inter alia of the long time which has since passed and the successive increases which have followed (by decisions of the general meeting), as equivalent, under Community law, to recognition that the shares which have resulted from the invalid increase in the share capital are invalid?

<sup>(1)</sup> OJ L 26 of 31.1.1977, p. 1.

**Reference for a preliminary ruling by the Bundesfinanzhof by order of that court of 17 May 2001 in the case of Finanzamt Groß-Gerau against MKG-Kraftfahrzeuge-Factoring GmbH**

(Case C-305/01)

(2002/C 56/05)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 17 May 2001, received at the Court Registry on 3 August 2001, for a preliminary ruling in the case of Finanzamt Groß-Gerau v MKG-Kraftfahrzeuge-Factoring GmbH on the following questions:

1. Can a factoring company which buys debts and assumes liability for the risk of loss in relation to those debts be said to be using goods and services received by it for the purposes of its transactions?
2. Do such activities involve taxable transactions or transactions (they involve the latter in any event) for the purposes of Article 13B(d) of Directive 77/388/EEC<sup>(1)</sup> which may be taxed to the extent that the Member States

have conferred on taxable persons a right to opt for taxation? Which of the transactions listed in Article 13B(d) of Directive 77/388/EEC are involved?

<sup>(1)</sup> OJ L 145, p. 1.

**Reference for a preliminary ruling, by order of the Bundesfinanzhof of 27 September 2001 in the case of KapHag Renditefonds, 35 Sprecenter Berlin-Hellersdorf, 3. Tranche GbR against Finanzamt Charlottenburg**

(Case C-442/01)

(2002/C 56/06)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) of 27 September 2001, which was received at the Court Registry on 16 November 2001, for a preliminary ruling in the case of KapHag Renditefonds, 35 Sprecenter Berlin-Hellersdorf, 3. Tranche GbR v Finanzamt Charlottenburg on the following questions:

1. Where a partnership assumes a partner on payment of a capital contribution in cash, does it effect a supply to him for consideration within the meaning of Article 2(1) of Directive 77/388/EEC<sup>(1)</sup>?
2. If so, is it an incidental transaction for the purposes of Article 19(2), sentence 2, of Directive 77/388/EEC, and is the taxable person entitled to rely on Article 19(2), sentence 2, of Directive 77/388/EEC, according to which such incidental transactions do not exclude a deduction?

<sup>(1)</sup> OJ L 145, p. 1.

**Action brought on 3 December 2001 by the Commission of the European Communities against the Federal Republic of Germany**

(Case C-463/01)

(2002/C 56/07)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 3 December 2001 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser in the Commission of the European Communities, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of the Commission's Legal Service, Wagner Centre, Kirchberg.