

**Reference for a preliminary ruling by the Højesterets Anke- og Kæremålsudvalg by order of that Court of 22 January 2003 in the case of I/S Fini H against Skatteministeriet**

(Case C-32/03)

(2003/C 83/10)

Reference has been made to the Court of Justice of the European Communities by order of the Højesterets Anke- og Kæremålsudvalg (Appeals and Objections Committee of the Supreme Court) of 22 January 2003, received at the Court Registry on 28 January 2003, for a preliminary ruling in the case of I/S Fini H against Skatteministeriet (Danish Ministry of Taxation) on the following questions:

**Question 1**

Can a person be regarded as independently carrying on an economic activity within the meaning of Article 4(1)-(3) of the Sixth VAT Directive<sup>(1)</sup> in a situation in which the person concerned originally entered into a lease agreement as part of an independent economic activity but has now ceased that actual activity, even though the lease continues to exist for a particular period as a result of a non-termination clause, and in which, after the actual activity ceases, no transactions subject to VAT are conducted by application of the lease for the purpose of obtaining income therefrom on a continuing basis.

**Question 2**

Does the question whether or not the person concerned actively seeks, during the remaining part of the period of non-terminability, either to utilise the commercial lease to conduct transactions subject to VAT for the purpose of obtaining income therefrom on a continuing basis or to dispose thereof have any bearing on the answer to Question 1 and does the length of the period of non-terminability or the remaining part thereof likewise have any bearing?

<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, 13.6.1977, p. 1).

**Action brought on 28 January 2003 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland**

(Case C-33/03)

(2003/C 83/11)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 28 January 2003 by the Commission of the European Communities, represented by R. Lyal, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

- (1) declare that by granting taxable persons the right to deduct value added tax in respect of certain supplies of road fuel to non-taxable persons, contrary to Articles 17 and 18 of the Sixth Council Directive of 17 May 1977 (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment<sup>(1)</sup>, the United Kingdom has failed to fulfil its obligations under the EC Treaty;
- (2) order the United Kingdom to pay the costs.

*Pleas in law and main arguments*

By virtue of the VAT (Input Tax) (Person Supplied) Order 1991 [hereinafter, 'the disputed Order'], a taxable person is granted the right to deduct VAT in respect of supplies of road fuel to a non-taxable person, where the taxable person reimburses to the latter the cost of the fuel. Although the language of the Order is general, it appears that the right of deduction is granted to employers in respect of purchases of road fuel by their employees.

In the Commission's view, the provisions of the Order are contrary to the Sixth VAT Directive in three respects and in relation to two provisions. First of all, the disputed Order grants a right of deduction in respect of supplies to another, non-taxable, person, contrary to Article 17(2)(a). Secondly, the measure does not state that deduction can be granted only in respect of goods and services used for the purposes of taxable transactions; it thus fails to comply with the condition to that effect set out in Article 17(2). Finally, deduction is granted in the absence of any VAT invoice, contrary to Article 18(1)(a).

<sup>(1)</sup> OJ L 145, 13.6.1977, p. 1.