



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

20 March 2014*

(Request for a preliminary ruling — Sixth VAT Directive — Exemptions — Transactions concerning the sale of shares and involving the transfer of interests in immovable property — Imposition of an indirect tax distinct from VAT — Articles 49 TFEU and 63 TFEU — Purely internal situation)

In Case C-139/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Spain), made by decision of 9 February 2012, received at the Court on 19 March 2012, in the proceedings

Caixa d'Estalvis i Pensions de Barcelona

v

Generalidad de Cataluña,

THE COURT (Tenth Chamber),

composed of E. Juhász, President of the Chamber, A. Rosas (Rapporteur) and C. Vajda, Judges,

Advocate General: M. Wathelet,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 12 June 2013,

after considering the observations submitted on behalf of:

- La Caixa d'Estalvis i Pensions de Barcelona, by C. Gómez Barrero, J. Buendía Sierra and E. Zamarriego Santiago, abogados,
- the Generalidad de Cataluña, by N. París, acting as Agent,
- the Spanish Government, by N. Díaz Abad, acting as Agent,
- the Finnish Government, by J. Heliskoski, acting as Agent,
- the European Commission, by L. Lozano Palacios, acting as Agent,

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

* Language of the case: Spanish.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 13B(d)(5) 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 91/680/EEC of 16 December 1991 (OJ 1991 L 376, p. 1), ('the Sixth Directive') and of Articles 49 TFEU and 63 TFEU.
- 2 The request has been made in proceedings between La Caixa d'Estalvis i Pensions de Barcelona ('La Caixa') and the Generalidad de Cataluña (Autonomous Government of Catalonia), concerning an application for reimbursement of tax on capital transfers and documented legal acts ('tax on capital transfers').

Legal context

EU law

- 3 Under Title V of the Sixth Directive, entitled 'Taxable Transactions', Article 5 of that directive provides:

 '1. "Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.

 ...

 3. Member States may consider the following to be tangible property:

 ...

 (c) shares or interests equivalent to shares giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof.'
- 4 Under Title X of the Sixth Directive, entitled 'Exemptions', Article 13, entitled 'Exemptions within the territory of the country', comprises parts A ('Exemptions for certain activities in the public interest'), B ('Other exemptions') and C ('Options').
- 5 According to Article 13B of that directive:

 '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 the exemptions and of preventing any possible evasion, avoidance or abuse:

 ...

 (d) the following transactions:

 ...

 5. transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities, excluding:

 — documents establishing title to goods,

— the rights or securities referred to in Article 5(3);

...

(g) the supply of buildings or parts thereof, and of the land on which they stand, other than as described in Article 4(3)(a);

(h) the supply of land which has not been built on other than building land as described in Article 4(3)(b).'

6 Article 4(3)(a) and (b) of the Sixth Directive refers to 'the supply before first occupation of buildings or parts of buildings and the land on which they stand' and to 'the supply of building land', respectively.

7 Article 13C of the Sixth Directive provides:

'Member States may allow taxpayers a right of option for taxation in cases of:

...

(b) the transactions covered in B(d), (g) and (h) above.

Member States may restrict the scope of this right of option and shall fix the details of its use.'

8 Article 28(3) of the Sixth Directive provides:

'During the transitional period referred to in paragraph 4, Member States may:

...

(b) continue to exempt the activities set out in Annex F under conditions existing in the Member State concerned;

...'

9 Annex F to the Sixth Directive, entitled 'Transactions referred to in Article 28(3)(b)', refers in point 16 to 'Supplies of those buildings and land described in Article 4(3)'.

10 Article 33(1) of the Sixth Directive provides:

'Without prejudice to other Community provisions, in particular those laid down in the Community provisions in force relating to the general arrangements for the holding, movement and monitoring of products subject to excise duty, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and, more generally, any taxes, duties or charges which cannot be characterised as turnover taxes, provided however that those taxes, duties or charges do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.'

Spanish law

The legislation on value added tax

- 11 Article 8 of Law 30/1985 on value added tax (Ley 30/1985 del Impuesto sobre el Valor Añadido) of 2 August 1985 (BOE No 190 of 9 August 1985, p. 25214) provides:

‘The following shall be exempt from value added tax [(‘VAT’)]:

...

18. The following financial transactions, irrespective of the person or entity which carries them out:

...

- (g) services and transactions, excluding management and safekeeping, in shares, interests in companies, debentures and other securities which are not listed in the preceding subparagraphs of paragraph 18, excluding:

- a. documents establishing title to goods;
- b. securities giving the holder thereof *de jure* or *de facto* ownership, use or exclusive possession over immovable property.

...’

- 12 Article 13(1)(18)(k) of Royal Decree 2028/1985 approving the regulation on value added tax (Real Decreto 2028/1985 por el que se aprueba el Reglamento del Impuesto sobre el Valor Añadido) of 30 October 1985 (BOE No 261 of 31 October 1985, p. 34469), reproduces the abovementioned wording of Article 8 of Law 30/1985, adding the following provisions:

‘Shares or interests in companies or other entities do not come within this category.

...’

- 13 Article 20(1)(18)(k) of Law 37/1992 on value added tax (Ley 37/1992 del Impuesto sobre el Valor Añadido) of 28 December 1992 (BOE No 312 of 29 December 1992, p. 44247), is identical in content to the abovementioned extract of Royal Decree 2028/1985.

The legislation on the stock market

- 14 Article 108 of Law 24/1988 on the Stock Market (Ley 24/1988 del Mercado de Valores) of 28 July 1988 (BOE No 181 of 29 July 1988, p. 23405), as amended by Law 18/1991 on income tax payable by natural persons (Ley 18/1991 del Impuesto sobre la Renta de las Personas Físicas) of 6 June 1991 (BOE No 136 of 7 June 1991, p. 18665), (‘the Law on the Stock Market’) provides:

‘1. The transfer of securities, whether or not negotiable on an official secondary market, shall be exempt from tax on capital transfers and documented legal acts and from [VAT].

2. By derogation from the provisions of paragraph 1, the following shall, as “transfer of assets for consideration”, be subject to tax on capital transfers and documented legal acts:

1. Transfers made on the secondary market, and also acquisitions made on the primary market as a consequence of the exercise of preferential subscription rights and of the right to convert debentures into shares, of securities which represent a portion of the share capital or assets of companies, funds, associations or other entities at least 50% of the assets of which comprise immovable property situated within the national territory, provided that, as a result of such a transfer or acquisition, the purchaser obtains full ownership of those assets or, at least, is in a position which enables it to exercise control over those entities.

Control over commercial companies will be deemed to have been obtained when a shareholding of more than 50% has been acquired, whether directly or indirectly.

For the purposes of calculating 50% of the assets comprising immovable property, account shall not be taken of those immovable assets, except building plots and sites, which form part of the operating assets of companies whose sole corporate object consists in the exercise of business activities involving property construction or development.

2. Transfers of company shares or shareholdings, received in consideration for immovable assets made on the occasion of the incorporation of companies or the increase in their capital, on condition that between the date of contribution and the date of transfer a period of less than one year has elapsed.

In the above cases, the rate for transfers of immovable assets for consideration shall be applied to the value of the aforementioned assets calculated in accordance with the rules contained in the current regulations governing the tax on capital transfers and documented legal acts.’

The legislation relating to the tax on capital transfers

- 15 Article 7(5) of the consolidated version of the Law concerning the tax on capital transfers and documented legal acts (*Ley del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*), approved by Royal Legislative Decree 3050/1980 of 30 December 1980 (BOE No 29 of 3 February 1981, p. 2442), as amended by Law 29/1991 on the adaptation of certain tax concepts to the directives and regulations of the European Communities (*Ley 29/1991 de adecuación de determinados conceptos impositivos a las Directivas y Reglamentos de las Comunidades Europeas*) of 16 December 1991 (BOE No 301 of 17 December 1991, p. 40533) provides:

‘The following shall not come within the concept of ‘transfers of assets for consideration’, regulated in this chapter: the transactions listed above, if they are carried out by undertakings or independent workers in the exercise of their business or professional activities and, in any event, if they constitute deliveries of goods or services which are subject to [VAT]. However, the following come within the concept of ‘transfers of assets for consideration’: the supply or lease of immovable property where that supply or lease benefit from an exemption from [VAT], and the supply of such assets which are included in the transfer of all of an undertaking’s assets and liabilities, where it appears that the transfer of those assets and liabilities is exempt from [VAT].’

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

- 16 It is apparent from the order for reference that, in June 1991, La Caixa, which held 3.26% of the share capital of *Inmobiliaria Colonial SA* (*‘Inmobiliaria Colonial’*), decided to increase its shareholding in that company and, to that end, commenced negotiations with a view to acquiring *Banco Central SA*’s shareholding in that company, the assets of which essentially comprised immovable property. Those

negotiations ended, in February 1992, with La Caixa's acquisition of Banco Central SA's 63.85% holding in the share capital of Inmobiliaria Colonial. As a result of that acquisition La Caixa's shareholding in Inmobiliaria Colonial increased to over 65%. Following that acquisition, La Caixa made a successful public offer for the remaining share capital in Inmobiliaria Colonial, culminating in its holding, by virtue of those acquisitions, 96.85% of the shares in Inmobiliaria Colonial.

- 17 Since it had acquired more than 50% of the capital of the property company in question, in March 1992 La Caixa filed a self-assessment tax return in respect of tax on capital transfers at the rate of 6%, in accordance with Article 108 of the Law on the Stock Market. It declared a taxable base of 16 256 808 232 Spanish Pesetas (ESP) and a tax liability of ESP 975 408 494.
- 18 In February 1993, however, La Caixa applied to the Delegación Territorial de Barcelona del Departamento de Economía y Finanzas de la Generalidad de Cataluña (Barcelona Regional Office of the Department of Economy and Finance of the Autonomous Government of Catalonia) for reimbursement of sums paid but not due in the amount of ESP 975 408 454, together with the corresponding interest, on the grounds that Article 108 of the Law on the Stock Market was contrary to EU law, in particular the Sixth Directive, and that that article was not, in any event, applicable to the acquisition of the securities in question since that acquisition was not a means of disguising a sale of immovable property.
- 19 Having received no express reply with the prescribed statutory period, La Caixa lodged an administrative complaint against the implicit rejection of its application for reimbursement. This was dismissed by a decision of the Tribunal Económico-Administrativo Regional de Cataluña (Regional Economic Administrative Court, Catalonia) on 30 January 1998, and this dismissal was confirmed by the Tribunal Económico-Administrativo Central (Central Economic Administrative Court) on 14 May 1999.
- 20 La Caixa brought an appeal before the Chamber for Contentious Administrative Proceedings of the Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia), the fourth division of which gave a judgment on 28 May 2004 upholding that appeal solely on the ground that the taxable base should not have been set at the real value of all the immovable property constituting Inmobiliaria Colonial's assets, but at such part of the value of the immovable property as was in proportion to the shares being transferred.
- 21 The other arguments raised by La Caixa in its appeal were, however, rejected. Those arguments related to, first, the incompatibility of Article 108 of the Law on the Stock Market with the provisions of Article 13B(d)(5) of the Sixth Directive, inasmuch as Article 108 of that Law requires share sales to be subject to tax on capital transfers and exempts them from VAT, notwithstanding the fact that that provision of EU legislation does not permit the VAT exemption to extend to 'shares or interests equivalent to shares giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof'. Second, La Caixa had raised the contradiction, in its view, between Article 108, on the one hand, and, on the other, the Spanish Constitution and EU law, inasmuch as that Spanish legal provision establishes a general, irrebuttable presumption of fraud under which all transfers of shares in companies whose assets essentially comprise property are carried out for tax-avoidance purposes.
- 22 La Caixa brought an appeal against the judgment of the Tribunal Superior de Justicia de Cataluña before the referring court, relying on a single ground of appeal alleging, in particular, breach of Article 13B(d)(5), Article 5(3) and Article 27 of the Sixth Directive.
- 23 According to La Caixa, both the exemption of the transaction at issue from VAT and the requirement that it be made subject to tax on capital transfers, as provided for in the Law on the Stock Market, are contrary to the Sixth Directive. It is not appropriate, in its view, either to require the transfer of shares in companies giving the holder thereof rights of ownership or possession over immovable property or

part thereof to be subject to tax on capital transfers or to exempt that transaction from VAT, particularly since the Member State concerned derogated from application of the Sixth Directive without having followed the procedure laid down in Article 27 for obtaining the necessary authorisation from the Council with a view to preventing tax avoidance in the context of the transfer of immovable property by companies.

24 The referring court, being in some doubt, in particular, as to whether the combined provisions of Articles 13B(d)(5) and 5(3)(c) of the Sixth Directive allow Member States to exempt from VAT transactions relating to the selling of shares of companies the assets and liabilities of which comprise essentially immovable property, and whether that directive allows the acquisition of the majority of the capital in those companies to be made subject to an indirect tax, distinct from VAT, such as the tax on capital transfers, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- '(1) Does Article 13B(d)(5) of [Sixth] Directive 77/388/EEC ... require that transactions by a taxable person involving the sale of shares which amount to acquiring title to immovable property be subject to VAT and not be exempt, in view of the exception made in that directive in respect of securities giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof?
- (2) Does the [Sixth] Directive ... permit a provision such as Article 108 of the Law ... on the Stock Market, which provides that the acquisition of the majority of the capital of a company the assets of which essentially comprise immovable property is liable to an indirect tax other than VAT, called "tax on capital transfers", without regard to the possibility that the parties to the transaction may be acting in a business capacity, and, therefore, bearing in mind that, had there been a direct transfer of the immovable property instead of the shares or interests, the transaction would have been subject to VAT?
- (3) Is a provision of national law such as Article 108 of the Law ... on the Stock Market ..., which taxes the acquisition of the majority of the capital of companies the assets of which essentially comprise immovable property situated in Spain, without offering the possibility of demonstrating that the company over which control is obtained is economically active, compatible with the freedom of establishment under Article [49 TFEU] and with the free movement of capital under Article [63 TFEU]?'

Consideration of the questions referred

The second question

25 By its second question, which it is appropriate to consider first, the referring court asks, essentially, whether the Sixth Directive precludes legislation of a Member State which makes the acquisition of the majority of the capital of a company, the assets of which essentially comprise immovable property, subject to an indirect tax other than VAT, namely the tax on capital transfers, without regard to the fact that, if the purpose of the transactions concerned had been the direct acquisition of that immovable property, and not the acquisition of shares covering that immovable property, such transactions would be subject to VAT.

26 As a preliminary point, it must be noted that, to a large extent, the Sixth Directive exempts from VAT transactions relating to immovable property. In that regard, Article 13B(g) and (h) of that directive exempts, in particular, the transactions relating to immovable property which it lists, except those referred to in Article 4(3)(a) and (b) of that directive, namely, in particular, the supply of new buildings or of building land. In addition, those provisions are without prejudice to the possibility

conferred on Member States, pursuant to Article 28(3)(b) of the Sixth Directive, read in combination with point 16 of Annex F to that directive, to continue to exempt also supplies of those buildings and land referred to in Article 4(3) thereof.

- 27 Therefore, so far as concerns the difference in treatment referred to by the referring court in regard to, on the one hand, direct acquisitions of immovable property subject to VAT and, on the other hand, indirect acquisitions of such property subject to the tax on capital transfers, it must be observed that, in any event, the question whether direct acquisitions of immovable property are subject to VAT depends, *inter alia*, on the type of immovable property acquired.
- 28 Next, concerning the allegedly discriminatory tax treatment of supplies of immovable property potentially subject to VAT, it must be recalled that, as follows from Article 33(1) of the Sixth Directive, a Member State is not precluded from maintaining or introducing taxes, duties and charges which cannot be characterised as turnover taxes. Since EU law permits concurrent systems of taxation, it thus allows such taxes to be levied even where the charging of such taxes on a transaction which is already subject to value added tax may result in the double taxation of that transaction (see, to that effect, *Case 73/85 Kerrutt* [1986] ECR 2219, paragraph 22, and *Joined Cases C-283/06 and C-312/06 KÖGÁZ and Others* [2007] ECR I-8463, paragraph 33).
- 29 With regard to the national legislation at issue in the main proceedings, it should be recalled that the Court has already ruled on the compatibility of that legislation with Article 33(1) of the Sixth Directive in the case which gave rise to the order of 27 November 2008 in *Case C-151/08 Renta*. The Court, having recalled the essential characteristics of VAT set out in its case-law (see, *inter alia*, *Case C-475/03 Banca popolare di Cremona* [2006] ECR I-9373, paragraph 28 and the case-law cited), found in that order that a tax with characteristics such as those of the tax on capital transfers differs from VAT in such a way that it cannot be characterised as a turnover tax within the meaning of Article 33(1) of the Sixth Directive.
- 30 There is nothing in the case file submitted to the Court to suggest that that question needs to be analysed differently in the context of the present request for a preliminary ruling. Accordingly, in the light of the reasoning adopted in the order in *Renta*, it must be held that the Sixth Directive does not preclude the legislation here at issue in the main proceedings.
- 31 In the light of the foregoing, the answer to the second question is that the Sixth Directive must be interpreted as not precluding national legislation, such as Article 108 of the Law on the Stock Market, which makes the acquisition of the majority of the capital of a company, the assets of which essentially comprise immovable property, subject to an indirect tax other than VAT, such as that at issue in the main proceedings.

The first question

- 32 By its first question, which it is appropriate to consider in the second place, the referring court asks, in essence, whether, under the Sixth Directive, and, in particular, the second indent of Article 13B(d)(5) thereof, share trading transactions carried out by a taxable person and resulting in the acquisition of title to immovable property must, as a matter of course, be made subject to VAT.
- 33 The Commission contends in its written submissions that the main proceedings concern the question whether transactions carried out by La Caixa are subject to the tax on capital transfers, and not to VAT, and that the reply to that question does not in any way make it possible to determine whether those transactions may or not be subject to taxes other than VAT.

- 34 It is apparent, in this regard, from the request for a preliminary ruling that the referring court is asking the Court of Justice to rule on that question in order to determine whether La Caixa's share purchase transactions should be made subject to the tax on capital transfers, inasmuch as Spanish legislation provides that transactions subject to VAT are not subject to the tax on capital transfers.
- 35 In this regard, it must be recalled that the fiscal treatment that the Sixth Directive reserves for share purchase transactions involving the acquisition of title to immovable property may differ, in particular depending on the potential use, by the Member State concerned, of the discretionary powers at its disposal under Article 5(3) of that directive, read in combination with the second indent of Article 13B(d)(5) thereof, and also under Article 13C(b) thereof.
- 36 It must be held that the order for reference does not provide any precise information on the question whether the Spanish legislature has made use of those discretionary powers. In those circumstances, the Court is not in a position to establish, in a useful manner, any link between the provisions of national law applicable in the main proceedings and those of the Sixth Directive in respect of which an interpretation is sought.
- 37 In any event, as is apparent from the reply given to the second question, the Sixth Directive does not preclude share purchase transactions, such as those at issue in the main proceedings, from being made subject to an indirect tax distinct from VAT, such as that at issue in the main proceedings. Therefore, as regards the collection of that tax, it is of little consequence whether or not such transactions must be made subject, or not, to VAT in accordance with that directive.
- 38 Accordingly, having regard to the foregoing considerations, there is no need to reply to the first question referred.

The third question

- 39 The Spanish Government challenges the admissibility of the third question. In its view, all of the elements characterising the situation at issue in the main proceedings are confined within one single Member State and, therefore, a purely internal situation is involved which does not come under the European Union legal order. The Court, for that reason, does not, in its view, have jurisdiction to answer that question.
- 40 It should be noted that, while, in view of the division of responsibilities in the preliminary-ruling procedure, it is for the referring court alone to determine the subject-matter of the questions which it proposes to refer to the Court, it is for the Court to examine the conditions under which the case was referred to it by the national court, in order to assess whether it has jurisdiction (see, to that effect, Joined Cases C-92/09 and C-93/09 *Volker und Markus Schecke and Eifert* [2010] ECR I-11063, paragraph 39, and Case C-84/11 *Susisalo and Others* [2012] ECR, paragraph 16).
- 41 In this regard, it must be recalled that the Court does not have jurisdiction to reply to a question referred for a preliminary ruling where it is obvious that the provision of EU law referred to the Court for interpretation is incapable of applying (see, to that effect, Case C-567/07 *Woningstichting Sint Servatius* [2009] ECR I-9021, paragraph 43 and the case-law cited).
- 42 As regards the rules of EU law the interpretation of which is sought by the third question, it must be stated that the provisions of the FEU Treaty in relation to the freedom of establishment and free movement of capital do not apply to a situation all aspects of which are confined within a single Member State (see, to that effect, with regard to the freedom of establishment, Case C-389/05 *Commission v France* [2008] ECR I-5397, paragraph 49 and the case-law cited, and, with regard to the free movement of capital, Joined Cases C-515/99, C-519/99 to C-524/99 and C-526/99 to C-540/99 *Reisch and Others* [2002] ECR I-2157, paragraph 24 and the case-law cited).

- 43 It should nevertheless be recalled that, under certain very specific conditions, the purely internal nature of the situation concerned will not prevent the Court from answering a question referred pursuant to Article 267 TFEU.
- 44 That may be the case, in particular, if national law requires the referring court to grant the same rights to a national of the Member State of that court as those which a national of another Member State in the same situation would derive from EU law (see, to that effect, *inter alia*, Case C-448/98 *Guimont* [2000] ECR I-10663, paragraph 23; Case C-451/03 *Servizi Ausiliari Dottori Commercialisti* [2006] ECR I-2941, paragraph 29; Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 30) or where the request for a preliminary ruling concerns provisions of EU law to which the national law of a Member State refers in order to determine the rules applicable to a situation which is purely internal to that Member State (see, to that effect, *inter alia*, Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763, paragraph 36; Case C-3/04 *Poseidon Chartering* [2006] ECR I-2505, paragraph 15; C-313/12 *Romeo* [2013] ECR, paragraph 21).
- 45 In the present case it must be held, as the Spanish Government has observed, that all aspects of the dispute in the main proceedings are confined within one single Member State, since that dispute relates to the acquisition of a significant shareholding in a property company, established in Spain, by another company also established in Spain, the latter company being subject to a tax resulting from the fact that at least 50% of the assets of the property company which it acquired comprises immovable property situated in Spain.
- 46 It is, however, not apparent from the request for a preliminary ruling that the referring court is required to grant to the parties to the dispute in the main proceedings, under national law, treatment which would be determined on the basis of that granted, under EU law, to an economic operator from another Member State in the same situation. Nor is it apparent that the referring court would have to rely on an interpretation of the rules of EU law in order to determine the content of the national law applicable in the present case.
- 47 Ultimately, since the order for reference does not provide sufficient factual information as to the link existing between the provisions of the FEU Treaty cited in the context of the third question and the national legislation applicable to the dispute in the main proceedings, it follows that, in circumstances such as those of the dispute in the main proceedings, all aspects of which are confined within the Member State concerned, the Court of Justice does not have jurisdiction to reply to the third question posed by the Tribunal Supremo.
- 48 Having regard to the foregoing considerations, it must be held that the third question is inadmissible.

Costs

- 49 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 (Tenth Chamber) hereby rules:

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, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as not precluding a national provision, such as Article 108 of Law 24/1988 on the Stock Market (*Ley 24/1988 del Mercado de Valores*) of 28 July 1988, as amended by Law 18/1991 on Income Tax payable by Natural Persons (*Ley 18/1991 del Impuesto sobre la Renta*)

de las Personas Físicas) of 6 June 1991, which makes the acquisition of the majority of the capital of a company, the assets of which essentially comprise immovable property, subject to an indirect tax other than value added tax, such as that at issue in the main proceedings.

[Signatures]