JUDGMENT OF THE COURT (Sixth Chamber)

8 June 2000 *

In Case C-396/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between

Grundstückgemeinschaft Schloßstraße GbR

and

Finanzamt Paderborn,

on the interpretation of Article 17 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to

* Language of the case: German.

turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145 p. 1),

THE COURT (Sixth Chamber),

composed of: J.C. Moitinho de Almeida (Rapporteur), President of the Chamber, R. Schintgen, G. Hirsch, V. Skouris and F. Macken, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the German Government, by W.-D. Plessing, Ministerialrat in the Federal Ministry of the Economy, and C.-D. Quassowski, Regierungsdirektor in the same ministry, acting as Agents,

— the Commission of the European Communities, by E. Traversa, Legal Adviser, and A. Buschmann, a national civil servant on secondment to the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Grundstückgemeinschaft Schloßstraße GbR, represented by B. Westermann, Tax Adviser, Paderborn, of the German Government, represented by C.-D. Quassowski, and of the Commission,

represented by J. Grunwald, Legal Adviser, acting as Agent, at the hearing on 2 December 1999,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1999,

gives the following

Judgment

1 By order of 27 August 1998, received at the Court Registry on 6 November 1998, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of Article 17 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, hereinafter 'the Sixth Directive').

2 Those questions were raised in proceedings between Grundstückgemeinschaft Schloßstraße GbR (hereinafter 'Schloßstraße') and Finanzamt Paderborn concerning deduction of the value added tax ('VAT') paid by Schloßstraße on goods or services supplied to it in order to carry out certain operations in respect of which a legislative amendment made after those goods or services were supplied removed the right to waive exemption.

The Sixth Directive

3 Article 13 of the Sixth Directive provides:

'...

B. *Other exemptions*

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:

...

(b) the leasing or letting of immovable property...

...

C. *Options*

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

(a) letting and leasing of immovable property;

...

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

4 Article 17 of the Sixth Directive provides:

'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) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

...

3. Member States shall also grant to every taxable person the right to a deduction or refund of the value added tax referred to in paragraph 2 in so far as the goods and services are used for the purposes of:

(a) transactions relating to the economic activities as referred to in Article 4(2) carried out in another country, which would be eligible for deduction of tax if they had occurred in the territory of the country;

(b) transactions which are exempt under Article 14(1)(i) and under Articles 15 and 16(1)(B), (C) and (D), and paragraph 2;

(c) any of the transactions exempted under Article 13B(a) and (d), paragraphs 1 to 5, when the customer is established outside the Community or when these

transactions are directly linked with goods intended to be exported to a country outside the Community.

...'

5 According to Article 20 of the Sixth Directive:

'1. The initial deduction shall be adjusted according to the procedures laid down by the Member States, in particular:

(a) where that deduction was higher or lower than that to which the taxable person was entitled;

(b) where after the return is made some change occurs in the factors used to determine the amount to be deducted, in particular where purchases are cancelled or price reductions are obtained; however, adjustment shall not be made in cases of transactions remaining totally or partially unpaid and of destruction, loss or theft of property duly proved or confirmed...

2. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment shall be made only in respect of one fifth of the tax imposed on the goods. The adjustment shall be made on the basis of the variations in the

deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired or manufactured.

...

3. In the case of supply during the period of adjustment capital goods shall be regarded as if they had still been applied for business use by the taxable person until expiry of the period of adjustment. Such business activities are presumed to be fully taxed in cases where the delivery of the said goods is taxed; they are presumed to be fully exempt where the delivery is exempt. The adjustment shall be made only once for the whole period of adjustment still to be covered.

...

4. For the purposes of applying the provisions of paragraphs 2 and 3, Member States may:

— define the concept of capital goods,

— indicate the amount of the tax which is to be taken into consideration for adjustment,

— adopt any suitable measures with a view to ensuring that adjustment does not involve any unjustified advantage,

— permit administrative simplifications.

...'

The national VAT legislation

6 Article 4(12)(a) of the Umsatzsteuergesetz (Law on value added tax, hereinafter 'the UstG') provides:

'Among the operations covered by Article 1(1), subparagraphs (1) to (3), the following shall be exempt:

...

12. (a) the letting and leasing of land...'

7 Article 9 of the UstG provides, however:

'1. An entrepreneur may treat as taxable an operation exempted under Article 4(12) where that operation is carried out for another entrepreneur on behalf of his undertaking.

2. The waiver of the exemption under paragraph 1 shall not be available... in the event of letting or leasing of land [Article 4(12)(a)] unless the entrepreneur proves that the land is not used or intended either for residential purposes or for activities other than those of an undertaking.'

8 The Mißbrauchsbekämpfungs- und Steuerbereinigungsgesetz (Law on the simplification of tax legislation and combating of fraud, hereinafter 'the StMBG') of 21 December 1993 (BGBl. I 1993, p. 2310) limited, with effect from 1 January 1994, the scope of the right of option regarding taxation of the letting of land. Article 9(2) of the UStG, as amended by the StMBG, provides:

'The waiver of exemption under paragraph 1 shall be permitted... in the event of the letting or leasing of land (Article 4(12)(a)) only if the recipient of the service uses or intends using the land only for operations which do not preclude the deduction of input tax. It shall be for the entrepreneur to prove that those conditions are met.'

9 Under Article 18(3) of the UStG, the turnover tax return is to be made in the same way as for other taxes.

10 Article 27(2) of the UStG, as amended by the StMBG, contains the following transitional provision:

'Article 9(2) shall not apply where the building constructed on the land

1. is used or intended for dwelling purposes and was completed before 1 April 1985;

2. is used or intended for other purposes, not connected with an entrepreneurial activity, and was completed before 1 January 1986;

3. is used or intended for purposes other than those indicated in paragraphs 1 and 2 [dwelling or other purposes not relating to the business of an undertaking] and was completed before 1 January 1998;

and where... in the cases mentioned in paragraph 3, construction of the building commenced before 11 November 1993.'

11 Articles 164 and 168 of the Abgabenordnung (Tax Code, hereinafter 'the AO') provide for rapid assessment of the tax on the basis of the taxpayer's returns

alone, but, as a corollary, allows the tax administration to rectify that assessment as regards matters both of fact and of law.

12 Article 164 of the AO provides:

'1. Pending final review, taxes may, in general or in particular cases, be assessed subject to review, and no reasons need be stated for such assessment.

...

2. The assessment may be annulled or amended at any time whilst it remains reviewable...

...

4. When the period prescribed for assessment expires, the assessment shall cease to be subject to review...'

13 Article 168 of the AO states that a tax return shall rank as a tax assessment subject to review. Accordingly, pursuant to Article 18(3) of the UStG, the turnover tax return itself becomes, by virtue of the existing legislative provisions

and subject to review, a tax assessment, which may be amended at any time without any other conditions being required to be met.

The main proceedings and the questions referred to the Court

14 Schloßstraße is a company governed by civil law whose objects are to hold development rights in respect of land, to construct office and residential buildings thereon and to turn such assets to account on a long-term basis.

15 On 8 March 1991, Schloßstraße acquired development rights in respect of the abovementioned land and, on 16 March 1991, it applied for a building permit. An objection was raised that Schloßstraße's plan did not conform with the town-planning rules and as a result the permit was not issued to it until 27 May 1993.

16 It is clear from a decision adopted on 11 June 1993 by the members of Schloßstraße that they had resolved to transfer the building permit to a third party immediately after its issue. However, in the absence of a purchaser, that decision could not be implemented. On 10 October 1993, Schloßstraße concluded a contract with an architect with a view to constructing the building. Work commenced in January 1994 and was completed in December of the same year.

17 The total area of the building was divided into three parts: 39.38% was let out for dwelling purposes; for the rest, 13.96% was leased to an architect's firm and

46.49% to a public limited company (hereinafter 'the finance company'), 90% of whose business consisted in providing VAT-exempt financial services.

18 In its VAT returns for 1992 to 1994, Schloßstraße, relying on Article 9 of the UStG, waived exemption for the letting operations planned or carried out and claimed a right of deduction on invoices for goods or services relating to the construction work. Initially, that right of deduction was granted.

19 However, pursuant to Articles 164 and 168 of the AO, the relevant notices of assessment were issued subject to subsequent review.

20 The Finanzamt Paderborn undertook a review. Thereafter, it amended the abovementioned notices of assessment for 1992 and 1993 and drew up a first notice of assessment for 1994. In those notices, the Finanzamt agreed to the deduction of input VAT only as to 13.96% of the amounts declared, on the view that the only taxable use of the building was that of the architect's firm. According to the Finanzamt, it was no longer possible to allow deduction of VAT in respect of the 46.49% of the building used by the finance company for exempt operations since, for operations of that kind, the possibility of waiving the exemption had been removed with effect from 1 January 1994 following the amendment of Article 9(2) of the UStG by the StMBG. The Finanzamt also considered that Schloßstraße could no longer rely on the transitional provisions of Article 27(2) of the UStG, as amended by the StMBG, because construction of the building had not commenced before 11 November 1993, the final date prescribed by that provision for waiver of the benefit of exemption to be available.

21 Schloßstraße lodged an objection against the VAT assessments for 1992, 1993 and 1994, which was rejected by the Finanzamt.

22 On 8 December 1995 Schloßstraße brought an action before the Finanzgericht (Finance Court) Münster against that adverse decision of the Finanzamt. By judgment of 8 October 1996, the Finanzgericht dismissed that action.

23 On 27 November 1996 Schloßstraße appealed on a point of law to the Bundesfinanzhof. In its appeal, Schloßstraße contends, first, that the restriction of the right to opt for taxation introduced by the StMBG is inapplicable to it since construction of the building must be deemed to have commenced on the date on which it applied for a building permit or, at least, the date of its grant. Furthermore, it infers from Case C-110/94 *INZO* v *Belgian State* [1996] ECR I-857 that, by virtue of the principle of the protection of legitimate expectations, it cannot *ex post facto* be divested of the right to deduct VAT paid during 1992 and 1993, in particular on architect's fees and notarial fees.

24 The Bundesfinanzhof entertains doubts as to the successful outcome of the appeal on a point of law based on the UStG and the procedural rules contained in the AO. It considers, first, that Schloßstraße cannot rely on the transitional provisions of Article 27(2) of the UStG because construction of the building did not begin until January 1994. The services already provided in 1992 and 1993 form part of the construction costs of the building and, therefore, of the building as 'capital goods'. Consequently, the decision on the deduction of VAT paid in respect of those services cannot be adopted without taking account of the construction date or, therefore, of the limitation introduced by the StMBG, since

it depends on the actual purpose of the building in question, that is to say leasing operations carried out in 1994, and whether those operations are taxable or exempt.

25 Since, according to the case-law of the Bundesfinanzhof relating to the UStG, a final decision on the right to deduction cannot be taken until the real use of capital goods is ascertained, the Finanzamt was, in its view, right, under Article 164(2) of the AO, to amend the notices of assessment issued subject to subsequent review and to disallow deduction to the extent to which the services provided were ultimately used for VAT-exempt operations.

26 Next, the national court observes that retroactive application of Article 9(2) of the UStG, as amended by the StMBG, to the services provided in 1992 and 1993 does not infringe the constitutional principle of non-retroactivity. On the date on which the new version of Article 9(2) of the UStG entered into force, the right of deduction in respect of capital goods had not crystallised because the final use of those goods had not yet been established and that factor is determinative as regards the decision on the right of deduction.

27 Finally, the Bundesfinanzhof considers that Schloßstraße cannot invoke the principle of the protection of legitimate expectations and rely on its conviction that it was entitled to exercise the option provided for by Article 9(2) of the UStG in respect of the planned leasing of the building because construction of it commenced only after the entry into force of the new rules. It also states that, according to the findings of the Finanzamt, Schloßstraße still envisaged, on 11 June 1993, transferring the building permit to a third party and that the instructions given to the architect were not accompanied by any firm order for building works. Moreover, according to the national court, the VAT for the years in dispute had been assessed subject to subsequent review, so that Schloßstraße could not legitimately expect that that assessment would not be amended

28 Nevertheless, querying whether such an interpretation of the relevant provisions of German law is consistent with the case-law of the Court of Justice on Article 17 of the Sixth Directive, the Bundesfinanzhof stayed proceedings pending a preliminary ruling from the Court on the following questions:

'(1) According to the case-law of the Court of Justice (Case C-37/95 *Ghent Coal Terminal NV*, in which reference is made to Case C-110/94 *INZO*), a taxable person can retain the right to deduct tax charged on goods and services where, by reason of circumstances beyond his control, he has not made use of those goods and services for the purpose of carrying out taxable transactions.

According to that principle, does a taxable person also retain the right to deduct tax if he does in fact use the goods or services to carry out (leasing) transactions but, following a change in the law, is no longer entitled, after acquiring the goods or services, to opt to waive the tax exemption for the transactions carried out with them, and so cannot in fact carry out any *taxable* transactions?

(2) In such a case, where there is a subsequent change in circumstances, does the right to deduct tax also continue to exist if, under national law, the tax assessments were allowed to be subject to a subsequent review, enabling a quick tax assessment to be made solely on the basis of information supplied by the taxable person, but giving the revenue authority the right to correct the tax assessment in every respect on the basis of factual and legal considerations?'

29 By those two questions, which it is appropriate to consider together, the national court seeks essentially to ascertain whether Article 17 of the Sixth Directive must be interpreted as meaning that a taxable person's right to deduct VAT paid on

goods or services supplied to it with a view to certain leasing operations is retained where a legislative amendment post-dating the supply of such goods or services but pre-dating the commencement of the abovementioned operations deprives that taxable person of the right to waive exemption thereof, even if the VAT was assessed subject to subsequent review.

30 The German Government submits that Article 17(1) of the Sixth Directive determines only the time at which the right to deduct inputs tax arises. The material and legal conditions governing exercise of the right to deduct are laid down in Article 17(2). Those conditions include one requiring the goods and services in respect of which VAT has been paid to have been used for taxed operations. Accordingly, in the German Government's view, a final decision as to the right to deduction cannot be taken until it has been ascertained for what operations those goods and services were actually used, and that decision should take account of any legislative amendments made before the commencement of the taxed operations.

31 Consequently, a taxable person enjoys no right to deduct VAT paid on goods or services supplied to it with a view to certain leasing operations where, after the supply of those goods or services but before the commencement of such leasing, a legislative amendment deprives him of the right to waive exemption for such operations.

32 The German Government adds that the fact that, in the main proceedings, the goods or services were used for operations which were ultimately exempted distinguishes the present case from *INZO*, cited above, and Case C-37/95 *Belgian State* v *Ghent Coal Terminal* [1998] ECR I-1, in which the goods or services were intended to be used for taxed operations which were not ultimately carried out.

33 As a preliminary point, it must be borne in mind that Title X of the Sixth Directive lays down (Articles 13 to 16) rules on exemption from VAT for certain operations. The cases of exemption include, under Article 13B(b), the leasing and letting of immovable property. For such operations, however, the Member States are entitled, under the first paragraph of Article 13C, point (a), to reintroduce taxation, by means of a right of option which they may grant to their taxpayers. Under the second paragraph of Article 13C, the Member States may restrict the scope of that right of option and determine the way in which it is to be exercised.

34 On that point, the Court has held that a Member State which has availed itself of the possibility provided for by Article 13C of the Sixth Directive and has thus granted its taxpayers the right to opt for taxation of certain lettings of immovable property may, by means of a subsequent law, abolish that right of option and thus reintroduce the exemption for such operations (Case C-381/97 *Belgocodex* v *Belgian State* [1998] ECR I-8153, paragraph 27).

35 That is the context in which it falls to be considered whether a taxable person who has paid VAT on goods or services supplied to him with a view to carrying out certain leasing operations has acquired a right to deduct such VAT even though, between the date of supply of those goods or services and the date on which the letting operations commenced, a legislative amendment abolished the right to waive exemption for such operations.

36 In that connection, it must be borne in mind that a person who has the intention, confirmed by objective evidence, to commence independently an economic activity within the meaning of Article 4 of the Sixth Directive and who incurs the first investment expenditure for those purposes must be regarded as a taxable person. Acting in that capacity, he has therefore, in accordance with Article 17 et seq. of the Sixth Directive, the right immediately to deduct the VAT payable or paid on the investment expenditure incurred for the purposes of the transactions which he intends to carry out and which give rise to the right to deduct, without

having to wait for the actual operation of his business to begin (*Ghent Coal Terminal*, cited above, paragraph 17, and Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 47).

37 It is important to note that it is the acquisition of the goods or services by a taxable person acting as such that gives rise to the application of the VAT system and therefore of the deduction mechanism. The use to which the goods or services are put, or are intended to be put, merely determines the extent of the initial deduction to which the taxable person is entitled under Article 17 of the Sixth Directive and the extent of any adjustments in the course of the following periods, which must be made under the conditions laid down in Article 20 of that directive (Case C-97/90 *Lennartz* [1991] ECR I-3795, paragraph 15).

38 That interpretation is confirmed by the wording of Article 17(1) of the Sixth Directive, according to which the right to deduct arises at the time when the deductible tax becomes chargeable. Under Article 10(2) of that directive, that is the case as soon as the goods are delivered to or the services are performed for the taxable person who has the right to deduct.

39 Moreover, any other interpretation of Article 4 of the Sixth Directive would run counter to the principle that VAT should be neutral, in that it would burden the trader with the cost of VAT in the course of his economic activity without allowing him to deduct it in accordance with Article 17, and would create an arbitrary distinction between investment expenditure incurred before actual operation of a business and expenditure incurred during operation (Case 268/83 *Rompelman* [1985] ECR 655, paragraph 23; *INZO*, cited above, paragraph 16; and *Gabalfrisa*, cited above, paragraph 45).

40 Article 4 of the Sixth Directive does not, however, preclude the tax authority from requiring objective evidence in support of the declared intention to

commence economic activities which will give rise to taxable transactions. In that context, it is important to point out that a taxable person acquires that status definitively only if he made the declaration of intention to begin the envisaged economic activities in good faith. In cases of fraud or abuse, in which, for example, the person concerned, on the pretext of intending to pursue a particular economic activity, in fact sought to acquire as his private assets goods in respect of which a deduction could be made, the tax authority may claim, with retroactive effect, repayment of the sums deducted on the ground that those deductions were made on the basis of false declarations (*Rompelman*, paragraph 24, *INZO*, paragraphs 23 and 24, and *Gabalfrisa*, paragraph 46).

41 In those circumstances, it is for the national court to verify whether, having regard to the facts of the case before it and in particular the fact that on 11 June 1993 the members of Schloßstraße still envisaged transferring the building permit to a third party immediately after its issue, the declared intention to commence economic activities which would give rise to taxable transactions was made in good faith and was supported by objective evidence.

42 In the absence of fraud or abuse and subject to any adjustments to be made under the conditions laid down in Article 20 of the Sixth Directive, entitlement to deduct, once it has arisen, is retained even if the taxable person has been unable to use the goods or services which gave rise to a deduction in the context of taxable transactions by reason of circumstances beyond his control. In such a case, there is no risk of fraud or abuse capable of justifying subsequent repayment of the sums deducted (*Ghent Coal Terminal,* paragraphs 20 and 22).

43 A legislative amendment made, as in this case, between the date of supply of the goods or services with a view to the performance of certain economic activities and the date of commencement of such activities which, with retroactive effect, deprives a taxable person of the right to waive the VAT exemption for such activities constitutes a factor outside his control.

44 It should be borne in mind that in paragraph 25 of the judgment in *Belgocodex*, cited above, the Court held, with respect to retroactive removal of the right to opt for taxation and of entitlement to deduction which had already arisen under the Sixth Directive, that the principles of the protection of legitimate expectations and of legal certainty form part of the Community legal order and must be observed by the Member States when they exercise the powers conferred on them by Community directives.

45 In the specific circumstances of the *Belgocodex* case, the Court held in paragraph 26 of its judgment that it was for the national court to determine whether a breach of those principles had been committed by the retroactive repeal of the law which had introduced the right of option. In view of the fact that detailed arrangements had never been laid down for the implementation of that law, the Court considered that it was not in a position to decide whether the provisions of that law might have given rise to a legitimate expectation on the part of the taxable person which should be protected.

46 In the case in the main proceedings, as the Advocate General observed in points 40 to 43 of his Opinion, such specific circumstances are lacking. It is clear from the documents before the Court that Schloßstraße opted for taxation of the goods or services acquired during 1992 and 1993 under the national legislation in force when it exercised its right of option and that the tax authority refused to allow it to exercise its right to deduct the VAT paid on those goods or services on the sole ground that the StMBG had removed the right to opt for taxation.

47 In those circumstances, provided that the national court finds that the intention to commence economic activities giving rise to taxable transactions was declared in good faith and that that intention is supported by objective evidence, the taxable person is entitled immediately to deduct the VAT due or paid on the goods or services supplied with a view to the performance of the economic activities which it envisages carrying out and the principles of the protection of

legitimate expectations and of legal certainty preclude its being deprived retroactively of that right by a legislative amendment post-dating the supply of those goods or services.

48 Contrary to the German Government's contention, such a conclusion cannot be undermined by the fact that, in the case in the main proceedings, the reservation of the right to undertake a subsequent review enabled the tax authority to rectify the VAT assessment in every respect, as regards matters both of fact and of law.

49 It must be observed in that connection, as noted by the Advocate General in points 46 to 50 of his Opinion, that the tax authority's power to carry out reviews and to amend provisional assessments sent by it to taxable persons is incontestably useful in managing taxes in general and VAT in particular.

50 Such a possibility enables the tax authority to request, with retroactive effect, the repayment of sums deducted where the taxable person has, in a fraudulent or abusive manner, feigned a wish to engage in a particular economic activity but in reality sought to incorporate in his own assets property which might be the subject of a deduction.

51 The assessment of VAT subject to subsequent review also makes it possible to proceed, under the conditions laid down in Article 20 of the Sixth Directive, with adjustment of the amounts of VAT which the taxable person has deducted when acquiring capital goods, in particular where he changes his planned use of the building, for example by increasing the proportion thereof which is to be used for residential purposes.

52 However, except in the cases referred to in the foregoing paragraphs, recourse to the assessment of VAT subject to subsequent review cannot, as is clear from paragraphs 45 and 46 of this judgment, allow the tax authority to deprive a taxable person of a right to deduct which he has acquired under Article 17 of the Sixth Directive.

53 The answer to the questions submitted must therefore be that Article 17 of the Sixth Directive must be interpreted as meaning that a taxable person's right to deduct VAT paid in respect of goods or services supplied to him with a view to his carrying out certain letting operations is retained where a legislative amendment post-dating the supply of those goods or services but pre-dating the commencement of such operations deprives the taxable person concerned of the right to waive exemption thereof, even if the VAT was assessed subject to subsequent review.

Costs

54 The costs incurred by the German Government and the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Sixth Chamber)

in answer to the questions referred to it by the Bundesfinanzhof by order of 27 August 1998, hereby rules:

Article 17 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 must be interpreted as meaning that a taxable person's right to deduct VAT paid in respect of goods or services supplied to him with a view to his carrying out certain letting operations is retained where a legislative amendment post-dating the supply of those goods or services but pre-dating the commencement of such operations deprives the taxable person concerned of the right to waive exemption thereof, even if the VAT was assessed subject to subsequent review.

Moitinho de Almeida Schintgen Hirsch

Skouris Macken

Delivered in open court in Luxembourg on 8 June 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber