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**A tax advantage contrary to the purpose of VAT provisions**

Tutor:  
Ben Terra  
Examiner:  
Oskar Henkow

Author:  
Stefan Norman

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# 1. Introduction to tax advantages contrary to the purpose of provisions

## 1.1 Background

The Court of Justice established in the Halifax case the basic outline of two requisites for determining the existence of abusive practice in the area of VAT.<sup>1</sup> One condition was that a tax advantage is gained which is contrary to the purpose of relevant articles in the VAT directive and national laws that transpose that directive, in spite of fulfilling the literal requirements of those provisions. Another condition was that the essential aim of the transactions must be to get a tax advantage. In case of abusive practice a taxable person has no right to deduct input VAT in connection with the abuse, which makes it important for a taxable person to know the purpose of the VAT directive articles that are used in his business.

Later case law has clarified that the essential aim, but not necessarily the only aim, needs to be to gain a tax advantage for a practice to be abusive.<sup>2</sup> In a recent case it was established that when two Member States (MS) have transposed a VAT directive in such a way that a transaction enjoys double non-taxation, then that is not an abusive practice on the part of the taxable person and that deduction of input VAT can not be denied.<sup>3</sup> The purpose of VAT directive provisions as well as the overall system of rules of which it is a component is also important when there are significant differences between language versions.<sup>4</sup>

## 1.2 Problems

What is the meaning of a tax advantage contrary to the purpose of an article in a VAT directive? What a tax advantage is may not be clear at all times. The meaning of the word purpose is not clear either. A purpose could lead to a tax advantage or expressly be a tax advantage. There is a need to create some order among the different expressions of purposes in case law on VAT directive provisions.

Since the case law doctrine on abuse of European Law in the area of VAT is not expressly limited to the purposes of the articles mentioned in the Halifax case and in the Parts Service case,<sup>5</sup> it is quite possible that in the future other types of transactions will be at risk of being considered abusive. This begs the question what the purposes are of all other articles that can be relevant in connection with tax advantages for any transaction.

Sixth Directive article 17(3) has been discussed by the Court of Justice in such a way that it is clear that there was a difference between purpose and objective, but it is not clear exactly what that difference is. The word purpose may refer to the detailed means to a goal, while the objective was the goal.<sup>6</sup>

If purpose is the detailed means, the details of the provision, then it would be possible to ascertain the purpose of a provision by a literal interpretation. But such an interpretation of

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<sup>1</sup> C-255/02 Halifax, para 99.

<sup>2</sup> C-425/06 Part Service, para 64.

<sup>3</sup> C-277/09 RBS Deutschland Holdings para 56.

<sup>4</sup> C-280/04 Jyske Finans, para 31.

<sup>5</sup> The principle of fiscal neutrality in C-255/02 Halifax, para 80 and the taxation of everything that is consideration in C-425/06 Part Service, para 60.

<sup>6</sup> C-136/99 Monte Dei Paschi di Sena, para 20.

the word purpose is not in line with the Halifax case,<sup>7</sup> in which it was established that it is a case of abuse if a literal interpretation of the provisions have been adhered to, but not their purpose:

...if, first, the transactions concerned, notwithstanding formal application of the conditions laid down by the relevant provisions of the Sixth directive and the national legislation transposing it, result in the accrual of a tax advantage the grant of which would be contrary to the purpose of those provisions.<sup>8</sup>

A formal application would reasonably mean acting in accord with a literal interpretation of a provision. By contrast, in another case the word “objective” has been used to refer to concrete goals of a provision and “purpose” has been used to a more abstract goal of the same provision.<sup>9</sup> In other words there is reason to be alert because the Court of Justice seems to not to have used the term purpose in a consistent way. Thus a problem in case law is what the Court of Justice has meant by the word purpose.

A balance needs to be struck between the principle of legal certainty and a literal interpretation of the purpose of a VAT directive. The principle of legal certainty is important in EU law in general,<sup>10</sup> and especially when money is involved.<sup>11</sup> The taxpayer must be able to know in advance exactly what the tax outcome will be of his trade.

There are levels of objectives from abstract ones like the principle of fiscal neutrality to specific objectives like to prescribe detailed rules in an area of VAT. An article may in case law have been declared to have one or many purposes.

There are purposes that are closely connected to the literal meaning of articles. Regarding article nine in the Sixth Directive for instance a purpose was to establish rules on the place of supply of services.<sup>12</sup> There are also purposes that are overarching or a further purpose, such as to avoid conflicts of jurisdiction.<sup>13</sup> Those further purposes can in turn be motivated by another purpose, such as to avoid double taxation or non-taxation.<sup>14</sup>

It would be easier to discuss the purposes of VAT directive articles if there were words that signify the different types of purposes found in the case law of the Court of Justice. To this end a simple typology will be suggested. The terms could be non-descriptive like type one, two and three. But the terms would be easier to use and remember if they were more descriptive. Therefore the author suggests the term literal purpose for the purposes explained by the Court of Justice based on the literal meaning of an article. The purpose to establish a rule in an area of VAT and the literal content of the rule would be a literal purpose. A further purpose would be the reason for the literal purpose, an example could be to avoid conflicts of

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<sup>7</sup> C-255/02 Halifax.

<sup>8</sup> C-255/02 Halifax, para 74.

<sup>9</sup> Compare C-98/07 Nordania Finans and BG Factoring, para 22 and para 23.

<sup>10</sup> C-301/97 Netherlands v. Council para 43.

<sup>11</sup> C-17/01 Südhof para 34 referred to in C-255/02 Halifax, para 72.

<sup>12</sup> C-377/08 EGN B.V. – Filiale Italiana v Agenzia delle Entrate, para 29.

<sup>13</sup> C-438/01 Design Concept v. Flanders Expo, para 22.

<sup>14</sup> C-377/08 EGN B.V. – Filiale Italiana v Agenzia delle Entrate, para 27.

jurisdiction. A third type could be called a still further purpose, which would refer to the motivation for the previous category called a further purpose.

This typology would be useful for a taxpayer who wants to avoid abusing European Law in the area of VAT. When the taxpayer in case law finds a literal purpose, then the taxpayer must continue to search for further purposes which needs to be fulfilled by the transactions the taxpayer is considering. This is because the case law doctrine on abuse of European Law in the area of VAT defines abuse as fulfilling the literal meaning of provisions, but not their purpose.<sup>15</sup>

It is not always obvious what would be advantageous for a taxable person. An exemption is mainly a burden on a taxable person who will not be able to deduct input VAT on that which is exempt. But it would be an advantage if a competitor is liable for output VAT and thus charges a higher price to customers than the trader who is exempt. A lower price would in many cases lead to greater volumes and profit.

In general if a transaction is taxed and gives the right to deduct input VAT, then that is a form of tax advantage. But a trader who is exempt and is able to buy his input goods or services with non-deductible input VAT is in a more competitive position than another trader who can deduct input VAT but is liable for output VAT and therefore has to sell at a higher price. Whether it is advantageous for a whole industry to be taxed and allowed to deduct or taxed and exempt depends on the elasticity of demand. If consumers have no choice but to buy what the particular industry offers, as in the case of financial services, then it is advantageous to be taxed. But if customers can choose to buy goods and services from another industry instead then it would be advantageous to be exempt.

Preambles to the VAT directives do express the purposes of the articles in those directives, but it's not clear how the preambles can be used to interpret the purposes of the articles.<sup>16</sup> There are many purposes stated in the preambles and they are also often very broad or not very helpful for the purposes of ascertaining intended tax advantages, which is evidenced by a very large number of clarifications in case law. In addition, preambles also give instructions on how to interpret or apply articles in the directives.<sup>17</sup>

### 1.3 Hypothesis

The case law doctrine on abuse of European Law in the area of VAT is problematic, partly because an exemption or the right to deduct input VAT and thus to be liable for output VAT may not necessarily be tax advantages and partly because case law on the purpose of VAT directive articles reveals many purposes, it uses synonyms for purpose and because there are purposes established by case law that may be fulfilled and still the taxable person could unknowingly abuse the law. As a solution to the latter problem a typology of purposes of VAT directive articles will be suggested as an aid to taxable persons who do not want to abuse the law.

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<sup>15</sup> C-255/02 Halifax, para 99.

<sup>16</sup> Compare RVD preambles.

<sup>17</sup> For instance C-190/95 ARO lease, para 12 and C-390/96 Lease Plan Luxembourg, para 22.

## 1.4 Delimitation

The purpose of this paper is not to exhaustively detail all case law on the purpose of VAT directive articles, but to present enough to show some problems in connection with the case law doctrine on abuse of European law in the area of VAT and to suggest a simple terminology to facilitate discussions of teleological interpretations. The results of research on purposes of articles that is not needed for argument's sake will be presented in an appendix, since it could be useful for taxpayers who do not want to commit abuse to know the purposes of provisions, it could be useful for other teleological interpretations of EU law and such a lengthy collection inclusive of literal purposes seems to not to have been made before. The purpose is not either to exhaustively analyze the economic effects of VAT directives, but to point out some problems with the case law doctrine on abuse regarding what is a tax advantage.

## 1.5 Method

The traditional legal method will be used. Mathematical examples of tax advantages in different circumstances will also be made.

## 1.6 Material

Case law from the Court of Justice, interpretation doctrine, as well as VAT directives will be used. Case law will be selected according to their usefulness to illustrate or solve the problems in connection with the criteria of abuse that there is a tax advantage contrary to the purpose of VAT provisions.

## 2. A tax advantage or even a disadvantage

### 2.1 To sell to consumers and pay no input VAT on value adding costs

In the landmark Halifax case the court stated that it would not be in accord with the purpose of the provisions in question, in particular the principle of fiscal neutrality, to allow a taxable person deduction of input VAT if that person's normal transaction would not entail such deduction in full or in part.<sup>18</sup> Deductions require "...a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to entitlement to deduct..."<sup>19</sup> In other words deduction of input VAT was described as a right based on fulfillment of a certain condition. Deduction of input VAT was between the lines assumed to always be advantageous. In addition numerous exemptions have the purpose to reduce prices for consumers.<sup>20</sup> Ten examples created by the author will now test those ideas, assuming that there is a chain of two traders who are in different industries or because of undetected abuse are treated differently for VAT purposes. They both have costs of 180 Euro,

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<sup>18</sup> C-255/02 Halifax, para 80.

<sup>19</sup> C-255/02 Halifax, para 79.

<sup>20</sup> C-307/01 d'Ambrumenil and Dispute Resolution Services, para 58, C-106/05 L.u.P, para 25, Joined cases C-394/04 and C-395/04 Yegeia, para 23, C-262/08 Copy Gene, para 30, C-357/07 TNT Post UK, para 32-33, C-401/05 VDP Dental Laboratory, para 34, C-498/03 Kingscrest Associates and Montecello, para 30, C-174/00 Kennemer Golf & Country Club, para 19, C-540/09 Skandinaviska Enskilda Banken AB Momsgrupp, para 21, C-242/08 Swiss Re Germany Holding, para 49 and C-363/05 JP Morgan Claverhouse Investment Trust and the Association of Investment Trust Companies, para 45.

the proportions of purchase costs inclusive of VAT compared to exempt value adding costs will be varied in different examples, while the consumer price will remain the same in the first six cases.

The first example could be designed with a proportionately low cost for the first purchase, a high value adding cost, while the final consumer price remains the same. The traders could buy goods for 50 Euro inclusive of 10 Euro VAT. Then they process the goods at a cost of 130 Euro each and sell to consumers at 200 Euro. The exempt trader would make a profit of 20 Euro ( $200-40-10-130=20$ ). The taxed trader who deducts input VAT would however due to output VAT of 40 Euro make a loss of 10 Euro ( $200-40-10-130-40+10=-10$ ). In other words it would be disadvantageous to be allowed to deduct input VAT, which is highly surprising considering being allowed to deduct is an advantage in the words of the Court of Justice.<sup>21</sup>

In a second example the proportion of the purchase cost exclusive of VAT and the exempt production cost would be equal. The two traders buy goods for 100 Euro inclusive of 20 Euro VAT. Then they process the goods at a cost of 80 Euro each. The trader who is exempt could sell the goods to consumers at 200 Euro and make a profit of 20 Euro ( $200-80-20-80=20$ ). The taxed trader could sell at 200 Euro inclusive of VAT but just break even, because of output VAT at 40 Euro minus input VAT 20 Euro ( $200-80-20-80-40+20=0$ ). Thus being liable for output VAT and therefore being able to deduct input VAT is not advantageous in this example, which is highly surprising considering being allowed to deduct is an advantage in the words of the Court of Justice.<sup>22</sup> However it is in line with the purpose of certain exemptions which partly was to reduce the consumer price.<sup>23</sup>

A third example will be created which compared to the first example has a proportionately larger cost for the first purchase and a lower value adding manufacture cost, while the consumer price is the same 200 Euro. The traders could buy goods for 130 Euro inclusive of 26 Euro VAT. The goods are processed at a cost of 50 Euro and sold for 200 Euro. The exempt trader would make the same profit of 20 Euro as before ( $200-104-26-50 = 20$ ). The taxed trader would make a profit of 14 Euro ( $200-104-26-50-40+26=14$ ). Yet again this shows that it would be disadvantageous to deduct input VAT and to charge output VAT, though in this example has the most positive outcome compared to the other examples with a smaller proportion of purchase cost versus value adding production cost.

So far it has been shown that the exempt trader in this series of examples always would make a profit of ten per cent of the consumer price, while the taxed trader would make a loss, break even or make a smaller profit than the exempt trader. The varying effect of the right to deduct input VAT clearly depends on how much input VAT there is to deduct from the VAT liability for output VAT, when the consumer price is the same as that of an exempt trader. The results

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<sup>21</sup> Compare C-255/02 Halifax, para 80-81.

<sup>22</sup> Compare C-255/02 Halifax, para 80-81.

<sup>23</sup> C-307/01 d'Ambrumenil and Dispute Resolution Services, para 58, C-106/05 L.u.P, para 25, Joined cases C-394/04 and C-395/04 Yegeia, para 23, C-262/08 Copy Gene, para 30, C-357/07 TNT Post UK, para 32-33, C-401/05 VDP Dental Laboratory, para 34, C-498/03 Kingscrest Associates and Montecello, para 30, C-174/00 Kennemer Golf & Country Club, para 19, C-540/09 Skandinaviska Enskilda Banken AB Momsgrupp, para 21, C-242/08 Swiss Re Germany Holding, para 49 and C-363/05 JP Morgan Claverhouse Investment Trust and the Association of Investment Trust Companies, para 45.



are in line with the purpose of certain exemptions to make the consumer price lower,<sup>24</sup> because by comparison with taxed traders there is a potential to lower consumer prices. For the exempt trader on the other hand VAT is a cost like any other. But it is not advantageous to be taxed and allowed to deduct input VAT, which is surprising considering the doctrine on abuse. A table will make a comparison easier:

Examples	One		Two		Three	
	Exempt	Taxed	Exempt	Taxed	Exempt	Taxed
Purchase	40+10	40+10	80+20	80+20	104+26	104+26
Value adding cost	130	130	80	80	50	50
VAT liability	0	40-10	0	40-20	0	40-26
Consumer price	200	200	200	200	200	200
Profit	20	-10	20	0	20	14

Table 1 – example one, two and three.

These comparisons are correct if the traders' cost of value adding processing is due to salaries, since salaries are outside the scope of VAT.<sup>25</sup> Now a comparison needs to be made using examples in which the value adding production is purchased with input VAT, in contrast to the three examples above.

## 2.2 To sell to consumers and pay input VAT on value adding costs

In the next three examples there will be input VAT on value adding processing costs. In the fourth example there is a proportionately lower cost for the first purchase, a higher value adding cost, while the final consumer price remains the same. The traders could buy goods for 50 Euro inclusive of 10 Euro VAT. Then they process the goods at a cost of 130 Euro each inclusive of 26 Euro VAT and sell to consumers at 200 Euro. The exempt trader would, make a profit of 20 Euro ( $200-40-10-104-26=20$ ). The taxed trader who deducts input VAT would however due to output VAT of 40 Euro make a profit of 16 Euro ( $200-40-10-104-26-40+10+26=16$ ). In this case both traders would make a profit and between the two the exempt trader would be better off.

A fifth example will be designed in which the purchase and value adding production costs exclusive of VAT are the same. Our traders could buy goods for 90 Euro inclusive of 18 Euro VAT. Then they process the goods at a cost of 90 Euro inclusive of 18 Euro VAT. The trader

<sup>24</sup> C-307/01 d'Ambrumenil and Dispute Resolution Services, para 58, C-106/05 L.u.P, para 25, Joined cases C-394/04 and C-395/04 Yegeia, para 23, C-262/08 Copy Gene, para 30, C-357/07 TNT Post UK, para 32-33, C-401/05 VDP Dental Laboratory, para 34, C-498/03 Kingscrest Associates and Montecello, para 30, C-174/00 Kennemer Golf & Country Club, para 19, C-540/09 Skandinaviska Enskilda Banken AB Momsgrupp, para 21, C-242/08 Swiss Re Germany Holding, para 49 and C-363/05 JP Morgan Claverhouse Investment Trust and the Association of Investment Trust Companies, para 45.

<sup>25</sup> RVD art 2(1)(c) and art 10.

who is exempt could sell the goods to consumers at 200 Euro and make a profit of 20 ( $200 - 71 - 18 - 72 - 18 = 20$ ). The taxed trader would make a smaller profit of 16 Euro, because not all output VAT would be compensated by deductible input VAT ( $200 - 72 - 18 - 72 - 18 - 40 + 18 + 18 = 16$ ). Again, being liable for output VAT and therefore being able to deduct input VAT is not advantageous in this example, which is highly surprising considering being allowed to deduct is an advantage in the words of the Court of Justice.<sup>26</sup> In addition exemptions do fulfill their purpose to reduce consumer prices when the purchase price and value adding processing are the same and both include input VAT at the same rate, because it is more advantageous to be exempt than to be taxed when the customer is a consumer.<sup>27</sup>

A sixth example will be created which has a proportionately larger cost for the first purchase and a lower value adding manufacture cost. The traders could buy goods for 130 Euro inclusive of 26 Euro VAT. The goods are processed for 50 Euro inclusive of 10 Euro VAT and sold for 200 Euro. The exempt trader would make the same profit of 20 Euro as in the two previous examples ( $200 - 104 - 26 - 40 - 10 = 20$ ). The taxed trader would like in the two previous examples make a profit of 16 Euro ( $200 - 104 - 26 - 40 - 10 - 40 + 26 + 10 = 16$ ). Yet again this shows that it would be disadvantageous to deduct input VAT and to charge output VAT.

In examples four through six with constant consumer prices the exempt trader makes a profit of ten per cent of the consumer price, while the taxed trader who is allowed to deduct input VAT makes a smaller profit. Clearly the constant difference in profit in these three examples is due to the fact that not all output VAT is covered by deductible input VAT. This set of examples shows yet again that it would be disadvantageous to be allowed to deduct input VAT, which is highly surprising considering being allowed to deduct is an advantage in the words of the Court of Justice.<sup>28</sup> A table will give an overview.

Example	Four		Five		Six	
	Exempt	Taxed	Exempt	Taxed	Exempt	Taxed
Purchase	40+10	40+10	72+18	72+18	104+26	104+26
Value adding cost	104+26	104+26	72+18	72+18	40+10	40+10
VAT liability	0	40-10-26	0	40-18-18	0	40-26-10
Consumer price	200	200	200	200	200	200
Profit	20	16	20	16	20	16

Table 2 – example four, five and six.

<sup>26</sup> Compare C-255/02 Halifax, para 80-81.

<sup>27</sup> Compare C-307/01 d'Ambrumenil and Dispute Resolution Services, para 58, C-106/05 L.u.P, para 25, Joined cases C-394/04 and C-395/04 Yegeia, para 23, C-262/08 Copy Gene, para 30, C-357/07 TNT Post UK, para 32-33, C-401/05 VDP Dental Laboratory, para 34, C-498/03 Kingscrest Associates and Montecello, para 30, C-174/00 Kennemer Golf & Country Club, para 19, C-540/09 Skandinaviska Enskilda Banken AB Momsgrupp, para 21, C-242/08 Swiss Re Germany Holding, para 49 and C-363/05 JP Morgan Claverhouse Investment Trust and the Association of Investment Trust Companies, para 45.

<sup>28</sup> Compare C-255/02 Halifax, para 80-81.

### 2.3 To sell to taxable persons and pay no input VAT on value adding costs

For the sake of a more complete picture comparisons will be made with the assumption that the traders will sell to other taxable persons who can to shift forward the tax to their customers in turn. This means the taxed trader could charge a higher price inclusive of VAT to match the profit of exempt taxable persons. In this scenario there is no input VAT on value adding processing costs. Example seven in the table below shows how the outcome in example one would have been under the new circumstances. Example eight shows the outcome of example two and example nine shows the outcome of example three in this new scenario. If the buyer can fully shift forward input VAT without affecting turnover and thus profits, then clearly the sale prices exclusive of VAT are what that buyer looks for in terms of prices. The examples in this scenario show that the traders can make the same profit. If the customers can bear a higher price inclusive of VAT, then there is room for the taxed trader to increase his sale price to make an even higher profit than the exempt trader.

Example	Seven		Eight		Nine	
	Exempt	Taxed	Exempt	Taxed	Exempt	Taxed
Purchase	40+10	40+10	80+20	80+20	104+26	104+26
Value adding cost	130	130	80	80	50	50
VAT liability	0	47.50-10	0	45-20	0	43.50-26
Price exclusive of VAT	200	190	200	180	200	174
Price	200	237.50	200	225	200	217.50
Profit	20	20	20	20	20	20

Table 3 – example seven, eight and nine.

### 2.4 To sell to taxable persons and pay input VAT on value adding costs

On the other hand it can be imagined that there is input VAT on the value adding processing costs and the buyer formally is able to fully shift forward all input VAT, but at the expense of a reduced turnover and thus a reduced profit, because his customers are final consumers who might shift their consumption to another business with more favorable prices or exempt traders who cannot deduct their input VAT. There is no need to show all examples four through six under the new circumstances, because the input VAT is constant in those examples. Since the input VAT is the highest compared to earlier examples, the deduction of input VAT from the VAT liability is the highest compared to the first three examples and therefore the sale price of the taxed trader can be the lowest among the latter four examples. Since the taxed trader is to make a profit and the profit margin is included in the price, the profit margin is taxed which necessarily makes the taxed trader's sale price higher than that of the exempt trader. A taxed trader who is allowed to deduct input VAT is thus at a disadvantage compared to an exempt trader also when the customer is a taxable person, if the

buyer is sensitive to the sale price inclusive of VAT. But if the buyer is able to fully shift forward all input VAT, without a negative impact on turnover and profits, then it is most advantageous to buy from a taxed seller. In such a case it is particularly advantageous to buy from a taxed seller who has been fully taxed on all purchase and production costs as is illustrated in the table below compared to the ones above.

Example	Ten	
	Exempt	Taxed
Purchase	40+10	40+10
Value adding cost	104+26	104+26
VAT liability	0	41-10-26
Price exclusive of VAT	200	164
Price	200	205
Profit	20	20

Table 4 – example ten.

### 3. A tax advantage contrary to the purpose of articles in the VAT directives

#### 3.1 Contrary to the purpose of an article - the principle of fiscal neutrality

Based on the Halifax case an overarching principle can be invoked to claim there has been abuse of law in the area of VAT.<sup>29</sup> The principle of fiscal neutrality would not be adhered to if a taxable person would not have carried out the transactions in question in normal circumstances and if all input VAT still would have been deducted:

To allow taxable persons to deduct all input VAT even though, in the context of their normal commercial operations, no transactions conforming with the deduction rules of the Sixth Directive or of the national legislation transposing it would have enabled them to deduct such VAT, or would have allowed them to deduct only a part, would be contrary to the principle of fiscal neutrality and, therefore, contrary to the purpose of those rules.<sup>30</sup>

This statement could be interpreted to mean that if a taxable person’s every day business activities are not deductible, then neither will transactions that are out of the ordinary, if the second condition that gaining a tax advantage is the main objective is also fulfilled.<sup>31</sup> This interpretation could possibly be circumvented by a newly started business which because it

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<sup>29</sup> C-255/02 Halifax, para 80  
<sup>30</sup> C-255/02 Halifax, para 80.  
<sup>31</sup> Compare C-255/02 Halifax, para 81.

has just started does not have a normal range of transactions to compare with. Whatever it would do would be a new benchmark of normality for that taxable person.

In later case law the case law on abuse has changed regarding considered normal transactions.<sup>32</sup> That a transaction is not normal for a taxable person has been considered to be irrelevant. Further, the usual transactions is not to be the benchmark for evaluating the existence of abuse.

43 Moreover, the fact that an undertaking which resorts to leasing transactions such as those at issue in the main proceedings does not engage in leasing transactions in the context of its normal commercial operations does not affect the foregoing considerations.<sup>33</sup>

44 A finding that there was an abusive practice is inferred, not from the nature of the commercial operations usually engaged in by the party which made the transactions in question, but from the object and effects of those transactions, as well as their purpose.<sup>34</sup>

The principle of fiscal neutrality is expressed in article 1(2) of the RVD.<sup>35</sup> The principle of fiscal neutrality means that as long as transactions are real economic activities they should be treated the same.<sup>36</sup> But in the Halifax case it was established that the transactions in question would be economic activities even if their only objective would be to gain a tax advantage.<sup>37</sup> A conclusion would be that abusive transactions should be treated the same as non-abusive as long as it is a matter of economic activities, but of course the judgment in the Halifax was that it would be contrary to the principle of fiscal neutrality to treat abusive and non-abusive economic activities the same.<sup>38</sup> How can that be in accord with that principle of fiscal neutrality which requires equal treatment for economic activities?

The principle of fiscal neutrality “includes the other two principles invoked by the Commission, namely the principles of VAT uniformity and of elimination of distortion in competition.”<sup>39</sup> Furthermore, the principle of fiscal neutrality was expressed in the fourth recital to the Sixth Directive and basically means that there shall be no discrimination through taxes based on which Member State goods or services have their origin.<sup>40</sup>

In addition the principle of fiscal neutrality requires that in general lawful and unlawful transactions should be taxed in the same way.<sup>41</sup> Only when there’s no competition between lawful and unlawful goods are the latter outside the scope of VAT.<sup>42</sup> The author considers by analogy that since abuse is a matter of acting against the purpose of a provision while being in

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<sup>32</sup> C-103/09 Weald Leasing, para 43-44.

<sup>33</sup> C-103/09 Weald Leasing, para 43.

<sup>34</sup> C-103/09 Weald Leasing, para 44.

<sup>35</sup> Terra and Kajus, Introduction to European VAT, p 63.

<sup>36</sup> C-155/94 Wellcome Trust, para 38.

<sup>37</sup> C-255/02 Halifax, para 60.

<sup>38</sup> C-255/02 Halifax, para 99.

<sup>39</sup> C-481/98 Commission v. French Republic, para 22.

<sup>40</sup> C-132/06 Commission v. Italy, para 45.

<sup>41</sup> C-349/96 Card Protection Plan, para 33.

<sup>42</sup> C-269/86 W. J. R. Mol. Para 18.

accord with the letter of that provision, the principle of fiscal neutrality would most easily be interpreted to mean that such abusive practices should be treated in the same way as non-abusive, in the same manner as lawful and unlawful transactions should be treated in the same way, which means they should be taxed in the same way. That seems to be the solution.

### **3.2 Contrary to the purpose of an article – taxation of all consideration**

Another possibility for establishment of abuse of law in the area of VAT is when a court characterizes transactions or the amounts declared for those transactions differently than the taxable person.<sup>43</sup> In the Part Service case the Court of Justice found that part of the payment for a taxed transaction was paid as if it was for an exempt transaction, which was not in accord with the directive which required taxation of all payment from customers to taxable persons. Value shifting in the form of a higher payment for financial services aspect of a leasing arrangement than for the lease fee than what was considered the reality of the situation led the court to consider part of the payment for the exempt financial services to in actuality be payment of the lease fee. This intended value shifting by the taxpayer was contrary to the purpose of article 11A(1) in the Sixth Directive on taxable amount. The said purpose was to tax everything that was consideration, and thus was the first criteria of abuse of law fulfilled. The court reinterpreted payment for financial service as a payment for lease. Since part of that payment for lease was not taxed it was contrary to the purpose of the article in question.

It is interesting to note that the Court of Justice interpreted the relevant article without reference to preambles or previous case law.<sup>44</sup> Instead the interpreted purpose of the article can be considered to be a reformulation that simplifies its literal meaning. Article 11A(1)(a) specifically mentions taxation of all that is payment for goods or services, while the other subparagraphs of the article can be considered to be rules on establishment of the value of payment in special cases.<sup>45</sup> Thus the court let the literal meaning of one subparagraph speak for the whole paragraph. This set the precedent that abuse may be the case in cases when the literal meaning of an article has been fulfilled, but not a reformulation of that literal meaning by the Court of Justice when the terms of contracts are reinterpreted by the court. A related conclusion is that the court may reinterpret terms of contracts such that in reality payments are not, and shall for taxation purposes be considered to be different from, what they are declared to be in the contracts. To summarize, the Court of Justice interpreted the purpose of a provision based on a simplification of its literal meaning and interpreted contracts to in actuality be different from their literal meaning.

### **3.3 Other circumstances in which a tax advantage is contrary to the purpose of an article**

Is it possible for abuse to take place in other circumstances where there's no value shifting? The Halifax case makes it possible, because the criterion is general. It refers to tax advantages

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<sup>43</sup> Compare C-425/06 Part Service, para 59-61.

<sup>44</sup> C-425/06 Part Service.

<sup>45</sup> Compare Sixth council directive article 11A(1)(a),(b),(c) and (d).

being not in accord with the purpose of provisions.<sup>46</sup> More provisions than the two mentioned above should therefore be applicable.

#### **4. Case law on purposes of VAT provisions**

The Court of Justice has clarified that the purpose of article 5(6) in the Sixth Directive was to tax a consumer and a taxable person in the same way regarding private use of business assets.<sup>47</sup> This was a further purpose, because it was not stated in the words of the provision how consumers were taxed.<sup>48</sup> Interestingly enough was the further purpose not based on a preamble.

15 It should be noted that the purpose of Article 5(6) of the Sixth Directive is to ensure equal treatment as between a taxable person who applies goods forming part of the assets of his business for private use and an ordinary consumer who buys goods of the same type. In pursuit of that objective, that provision prevents a taxable person who has been able to deduct VAT on the purchase of goods used for his business from escaping the payment of VAT when he transfers to business use those goods from his business for private purposes and from thereby enjoying advantages to which he is not entitled by comparison with an ordinary consumer who buys goods and pays VAT on them.<sup>49</sup>

The purpose of the article 5(6) was to treat taxable persons and consumers the same.<sup>50</sup> It was a further purpose in this case as well, because it was not stated in the article.<sup>51</sup> The further purpose was not based on a preamble.

21 On that point, it should be noted that the purpose of Article 5(6) of the Sixth Directive is to ensure equal treatment as between a taxable person who applies business assets for private purposes and an ordinary consumer who purchases goods of the same type (see Case C-20/91 De Jong [1992] ECR I-2847, paragraph 15, and Case C-230/94 Enkler [1996] ECR I-4517, paragraph 33).<sup>52</sup>

Article 5(6) in the Sixth directive had as its purpose that consumers and taxable persons who removes goods from their businesses should be taxed the same.<sup>53</sup> The words of the article do not mention taxation of consumers, thus it was a further purpose.<sup>54</sup> Also note that the words purpose and objective were used as interchangeable words in paragraphs 42 and 45.

**42. In this regard, it should be noted that the purpose of Article 5(6) of the Sixth Directive is, in particular, to ensure equal treatment as between a taxable person who**

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<sup>46</sup> C-252/02 Halifax, para 99.

<sup>47</sup> C-20/91 De Jong, para 15.

<sup>48</sup> Compare Sixth Directive art 5(6) and C-20/91 De Jong, para 15.

<sup>49</sup> C-20/91 De Jong, para 15.

<sup>50</sup> C-48/97 Kuwait Petroleum, para 21.

<sup>51</sup> Compare Sixth Directive art 5(6) and C-48/97 Kuwait Petroleum, para 21.

<sup>52</sup> C-48/97 Kuwait Petroleum, para 21.

<sup>53</sup> C-415/98 Bakcsi, para 42.

<sup>54</sup> Compare Sixth Directive art 5(6) and C-415/98 Bakcsi, para 42.



withdraws goods from his business and an ordinary consumer who buys goods of the same type. In pursuit of that objective, Article 5(6) prevents a taxable person who has been able to deduct VAT on the purchase of goods used for his business from escaping payment of VAT when he transfers those goods from his business for private purposes and from thereby enjoying advantages to which he is not entitled by comparison with an ordinary consumer who buys goods and pays VAT on them (see Case C-20/91 *De Jong* [1992] ECR I-2847, paragraph 15, and Case C-48/97 *Kuwait Petroleum* [1999] ECR I-2323, paragraph 21, as well as, with regard to heading (a) of the first subparagraph of Article 6(2) of the Sixth Directive, which is based on the same principle, Case C-230/94 *Enkler* [1996] ECR I-4517, paragraph 33).<sup>55</sup>

45. Such an interpretation is compatible with the objective of equal treatment pursued by Article 5(6) of the Sixth Directive, since the taxable person does not enjoy any advantage to which he is not entitled in comparison with an ordinary consumer.<sup>56</sup>

The objectives of article nine in the Sixth Directive was to settle which jurisdictions cover what areas, to have the same rules on place of supply of service in all Member States and to avoid double taxation or non-taxation.<sup>57</sup> That the rules on place of supply should be the same for all involved parties, was a further purpose because it was not expressly stated in the article.<sup>58</sup> To decide the boundaries of jurisdictions was a still further purpose, since it was not clearly expressed in the text of the provision, but it was a consequence of fulfillment of the previous purpose. To avoid that the same transaction would be taxed twice or not at all was a yet still further purpose for article 9(1) and 9(2), because it was not expressed in the article and it should reasonably be consequence of the previous purpose. Regarding article 9(3) it had a literal purpose of avoiding double taxation and non-taxation, since that was expressly stated in the provision itself.

14. The Finanzgericht's first question must be answered in the light of the objective pursued by Article 9 within the context of the general scheme of the sixth Directive. As the seventh recital in the preamble implies, Article 9 is designed to secure the rational delimitation of the respective areas covered by national value-added tax rules by determining in a uniform manner the place where services are deemed to be provided for tax purposes. Article 9(2) sets out a number of specific instances of places where certain services are deemed to be supplied, whilst Article 9(1) lays down the general rule on the matter. The object of those provisions is to avoid, first, conflicts of jurisdiction, which may result in double taxation, and, secondly, non-taxation, as Article 9(3) indicates, albeit only as regards specific situations.<sup>59</sup>

One purpose of article nine of the Sixth Directive was to avoid conflicts of jurisdiction and another was to eliminate non-taxation and double taxation.<sup>60</sup> The first purpose was not

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<sup>55</sup> C-415/98 *Bakcsi*, para 42.

<sup>56</sup> C-415/98 *Bakcsi*, para 45.

<sup>57</sup> C-168/84 *Gunter Berkholz*, para 14.

<sup>58</sup> Compare Sixth Directive art 9 and C-168/84 *Gunter Berkholz*, para 14.

<sup>59</sup> C-168/84 *Gunter Berkholz*, para 14.

<sup>60</sup> C-291/07 *Kollektivavtalsstifelsen TRR Trygghetsrådet*, para 24.



expressly mentioned in the article and thus it was a further purpose.<sup>61</sup> The second purpose was a still further purpose of article nine as a whole except for paragraph three, because it was described as a result of the first. However, it was a literal purpose for paragraph three, because it was mentioned in that part of the article. Also note that the word “object”<sup>62</sup> and “objective”<sup>63</sup> were used as synonyms in paragraph 24 and 30 of the judgment.

24 It should also be borne in mind that Article 9 of the Sixth Directive contains rules for determining the place where services are deemed to be supplied for VAT purposes. Whereas Article 9(1) lays down a general rule in that regard, Article 9(2) sets out a number of specific instances of places where certain services are deemed to be supplied. The object of those provisions is to avoid, first, conflicts of jurisdiction which may result in double taxation, and, secondly, non-taxation (see Case 168/84 *Berkholz* [1985] ECR 2251, paragraph 14; Case C-327/94 *Dudda* [1996] ECR I-4595, paragraph 20; Case C-167/95 *Linthorst, Pouwels en Scheres* [1997] ECR I-1195, paragraph 10; Case C-452/03 *RAL (Channel Islands) and Others* [2005] ECR I-3947, paragraph 23; and Case C-114/05 *Gillan Beach* [2006] ECR I-2427, paragraph 14).<sup>64</sup>

30 Such an interpretation is consistent with the objective pursued by Article 9 of the Sixth Directive, which – as was pointed out in paragraph 24 of the present judgment – is to lay down a conflict of laws rule to avoid the risk of double taxation or non-taxation.<sup>65</sup>

The aim of the exceptions in article 13 of the Sixth Directive was harmonization of the collection of the Community’s fiscal revenue.<sup>66</sup> That was a further purpose because it was based on a preamble and it was not mentioned in the article.<sup>67</sup>

47 Finally, it should be observed that, according to the 11th recital of the preamble to the Sixth Directive, the Council's aim in establishing the common list of exemptions was to ensure that the Community's own resources are collected in a uniform manner in all the Member States. It follows that, even though Article 13B of the Sixth Directive refers to the exemption conditions laid down by the Member States, the exemptions provided for by that provision must constitute independent concepts of Community law so that the basis for assessing VAT is determined uniformly and according to Community rules (see *Commission v Ireland*, paragraph 51, and Case C-240/99 *Försäkringsaktiebolaget Skandia* [2001] ECR I-1951, paragraph 23).<sup>68</sup>

In the same case it was also found that article 13 expressly aimed at blocking abuse.<sup>69</sup> That was obviously a literal purpose because it was found in the text of the article itself.<sup>70</sup>

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<sup>61</sup> Compare Sixth Directive art 9 and C-291/07 *Kollektivavtalsstifelsen TRR Trygghetsrådet*, para 24.

<sup>62</sup> C-291/07 *Kollektivavtalsstifelsen TRR Trygghetsrådet*, para 24.

<sup>63</sup> C-291/07 *Kollektivavtalsstifelsen TRR Trygghetsrådet*, para 30.

<sup>64</sup> C-291/07 *Kollektivavtalsstifelsen TRR Trygghetsrådet*, para 24.

<sup>65</sup> C-291/07 *Kollektivavtalsstifelsen TRR Trygghetsrådet*, para 30.

<sup>66</sup> C-326/99 *Stichting*, para 47.

<sup>67</sup> Compare Sixth Directive art 13 and C-326/99 *Stichting*, para 47.

<sup>68</sup> C-326/99 *Stichting*, para 47.

<sup>69</sup> C-326/99 *Stichting*, para 57.

<sup>70</sup> Compare Sixth Directive art 13 C-326/99 *Stichting*, para 57.

57 As the Netherlands Government has rightly pointed out, treating such a form of use of immovable property as letting prevents any abusive creation of a right to deduct input tax on immovable property, which is an aim expressly provided for by Article 13 of the Directive.<sup>71</sup>

The objective of both article 13A(1)(b) and (c) of the Sixth Directive was to lessen the cost of health care.<sup>72</sup> That was a further purpose because it was not expressed in the text of the article.<sup>73</sup> Also note that the words purpose and objective were used as interchangeable words in paragraphs 29 and 30.

29 Whilst ‘medical care’ and ‘the provision of medical care’ must have a therapeutic aim, it does not necessarily follow that the therapeutic purpose of a service must be confined within a particularly narrow compass (see Case C-76/99 *Commission v France* [2001] ECR I-249, paragraph 23, and Case C-212/01 *Unterpertinger* [2003] ECR I-13859, paragraph 40).<sup>74</sup>

30 Thus the Court has already ruled that medical services effected for prophylactic purposes may benefit from exemption under Article 13A(1)(b) or (c) of the Sixth Directive. Even in cases where the persons who are the subject of examinations or other medical intervention of a prophylactic nature are not suffering from any disease or health disorder, the inclusion of those services within the meaning of ‘medical care’ and ‘the provision of medical care’ is consistent with the objective of reducing the cost of healthcare, which is common to both the exemption under Article 13A(1)(b) of the Sixth Directive and that under (c) of that paragraph (see, to that effect, *L.u.P.*, paragraph 29, and the case-law cited). Accordingly, medical services supplied for the purpose of protecting, including maintaining or restoring, human health may benefit from the exemption under Article 13A(1)(b) and (c) of that directive (see, to that effect, *Unterpertinger*, paragraphs 40 and 41, and *D’Ambrumenil and Dispute Resolution Services*, paragraphs 58 and 59).<sup>75</sup>

Article 13A(1)(g) and (h) were intended to lessen the cost of certain activities in the public interest for those who received the services.<sup>76</sup> That was a further purpose since it was not mentioned in the text of the article.<sup>77</sup> Also not that “objectives” and “purposes” were used as synonyms.<sup>78</sup>

30 In that regard, so far as concerns, first, the objectives pursued by the exemptions under Article 13A(1)(g) and (h) of the Sixth Directive, it is clear from that provision that those exemptions, by treating certain supplies of services in the general interest in the social sector more favourably for the purposes of VAT, are intended to reduce the

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<sup>71</sup> C-326/99 *Stichting*, para 57.

<sup>72</sup> C-262/08 *Copy Gene A/S*, para 30.

<sup>73</sup> Compare Sixth Directive art 13A(b) and (c) with C-262/08 *Copy Gene A/S*, para 30.

<sup>74</sup> C-262/08 *Copy Gene A/S*, para 29.

<sup>75</sup> C-262/08 *Copy Gene A/S*, para 30.

<sup>76</sup> C-498/03 *Kingscrest Associates and Montecello*, para 30.

<sup>77</sup> Compare Sixth Directive art 13A(1)(g) and (h) with C-498/03 *Kingscrest Associates and Montecello*, para 30.

<sup>78</sup> C-498/03 *Kingscrest Associates and Montecello*, para 30.

cost of those services and to make them more accessible to the individuals who may benefit from them.<sup>79</sup>

The Sixth Directive article 13B(h) had as its objective to exempt supplies of land that was not and would not be occupied by a building.<sup>80</sup> That purpose is clear from a careful reading of the article and the article it in turn refers to.<sup>81</sup> Therefore it was a literal purpose.

43 In that respect, it must be recalled that, taking into account the express reference, in Article 4(3)(b) of the Sixth Directive, to the Member States' definitions of building land, it is for the Member States to define what land is to be regarded as being building land, for the purposes of the application both of Article 4(3)(b) and of Article 13B(h) of the Sixth Directive, while having regard to the objective pursued by Article 13B(h), which seeks to exempt from VAT only supplies of land which has not been built on and is not intended to support a building (see, to that effect, *Gemeente Emmen*, paragraphs 20 and 25).<sup>82</sup>

Article 14 in the Sixth Directive had several purposes in a case from the Court of Justice: Harmonization of VAT rules, elimination of tax on imports and exports, additional elimination of restrictions on free movement, "integration of national economies" and "preventing evasion, avoidance or abuse in cases of temporary importation."<sup>83</sup> The purposes were not explicitly expressed in the article in question and were presented in no particular order that conveyed a hierarchy; therefore they were all further purposes.<sup>84</sup> Note that there was no literal purpose, but five further purposes.

10 In the light of those provisions, the conditions required by the legislation of the Member States for granting exemption from VAT for vehicles imported under temporary arrangements must take account, on the one hand, of the objectives of harmonization of the rules relating to VAT which are, as is indicated in the recitals in the preamble to the Sixth Directive, the abolition of the imposition of tax on imports and the remission of tax on exports, further progress in the effective removal of restrictions on the movement of persons and goods and the integration of national economies and, on the other hand, the objective of preventing evasion, avoidance or abuse in cases of temporary importation.<sup>85</sup>

Article 17(2) of the Sixth Directive was meant to "ensure" the neutrality of VAT.<sup>86</sup> Since the principle of neutrality of VAT was not expressly mentioned in the article, it consequently was a further purpose.<sup>87</sup> The following quote is more understandable when it is recalled that

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<sup>79</sup> C-498/03 *Kingscrest Associates and Montecello*, para 30.

<sup>80</sup> C-461/08 *Don Bosco Onroerend Goed*, para 43.

<sup>81</sup> Compare Sixth Directive art 13B(d), art 4(3)(b) and C-461/08 *Don Bosco Onroerend Goed*, para 43.

<sup>82</sup> C-461/08 *Don Bosco Onroerend Goed*, para 43.

<sup>83</sup> C-127/86 *Ministère public and Ministre des Finances du royaume de Belgique v. Yves Ledoux*, para 10.

<sup>84</sup> Compare Sixth Directive art 14 and C-127/86 *Ministère public and Ministre des Finances du royaume de Belgique v. Yves Ledoux*, para 10.

<sup>85</sup> C-127/86 *Ministère public and Ministre des Finances du royaume de Belgique v. Yves Ledoux*, para 10.

<sup>86</sup> C-74/08 *PARAT Cabrio Automotive*, para 23.

<sup>87</sup> Sixth Directive 17(6), confirmed by C-74/08 *PARAT Cabrio Automotive*, para 23.

derogations were treated in article 17(6).<sup>88</sup> Also note that the word ensure could be substituted for purpose or objective, with the help of some rephrasing like ‘fulfills the purpose of’.

23 However, arrangements providing for a derogation from the principle of the right to deduct VAT, which are laid down in a general manner in Article 17(2) of the Sixth Directive and which ensure the neutrality of that tax, are to be interpreted strictly (see *Metropol and Stadler*, paragraph 59, and *Magoora*, paragraph 28).<sup>89</sup>

Article 17(2) of the Sixth Directive “ensures” that taxable persons are completely relieved of input VAT on that which is used for taxable transactions, which as a result guarantees neutrality of taxation.<sup>90</sup> Complete relief of input VAT was clear from the provision which mentioned input VAT due from other taxable persons, imports, as well as self-supply, which made it a literal purpose.<sup>91</sup> Neutrality of taxation was a consequence, but since it strictly speaking was not mentioned in the article it was a further purpose. Also note the use of the phrase “is meant to”<sup>92</sup> as a reformulation of purpose.

27 As regards, first, its context, Article 19 of the Sixth Directive is part of Title XI thereof, which sets out the rules governing deduction. The right to deduct, which is laid down in Article 17(2) of that directive, and relates to the input tax on the goods and services used by the taxable person for the purposes of his taxable transactions, is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures complete neutrality of taxation of all economic activities, provided that they are themselves subject in principle to VAT (see, inter alia, Case C-435/05 *Investrand* [2007] ECR I-1315, paragraph 22 and the case-law cited).<sup>93</sup>

The purpose of article 17(5) third subparagraph (a) to (d) in the Sixth Directive was to allow Member States to be more precise in their use of derogations regarding non-deductible input VAT by considering different aspects of a taxable persons business and another purpose was to allow the Member States to do this in slightly different ways.<sup>94</sup> Since those purposes were not expressly mentioned in the article and since they were not linked in a sequential way they were both further purposes.<sup>95</sup>

24 Finally, that conclusion is also confirmed by the purpose of (a) to (d) of the third subparagraph of Article 17(5) of the Sixth Directive, the aim of which is in particular, as the Commission contends, to permit Member States to achieve greater accuracy by taking into account the specific characteristics of the taxable person’s activities. Accordingly, Member States must be in a position to apply more accurate rounding up rules than those provided for in the second subparagraph of Article 19(1) of the Sixth Directive. If Member States were obliged, for reasons of simplification, to round up in

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<sup>88</sup> Compare Sixth Directive 17(6) and C-74/08 *PARAT Cabrio Automotive*, para 21.

<sup>89</sup> C-74/08 *PARAT Cabrio Automotive*, para 23.

<sup>90</sup> C-174/08 *NCC Construction Danmark*, para 27.

<sup>91</sup> Compare Sixth Directive article 17(2) and C-174/08 *NCC Construction Danmark*, para 27.

<sup>92</sup> C-174/08 *NCC Construction Danmark*, para 27.

<sup>93</sup> C-174/08 *NCC Construction Danmark*, para 27.

<sup>94</sup> C-488/07 *Royal Bank of Scotland*, para 24 and para 26.

<sup>95</sup> Compare Sixth Directive art 17(5) third subparagraph (a) to (d) and C-488/07 *Royal Bank of Scotland*, para 24 and para 26.

accordance with the latter method, which is less accurate, that would be contrary to the objective of those derogations.<sup>96</sup>

26 Contrary to Royal Bank of Scotland's contention, that finding is in no way affected by the objective of the Sixth Directive stated in the 12th recital in its preamble, namely that the deductible proportion should be calculated in a similar manner in all Member States. First, there is no requirement in that recital that the deductible proportion should be calculated in an identical manner in all Member States. Second, by expressly providing that Member States are permitted to derogate from the method of calculation in Article 19(1), by employing different methods, the Sixth Directive makes it possible for the deductible proportion to be calculated differently in the Member States.<sup>97</sup>

Article 19(1) and the second sentence of article 19(2) in the Sixth directive had as their purposes that certain incidental exempt financial transactions should not cause a reduction of deductible input VAT, that the pro rata calculation should not be distorted and that VAT should be neutral.<sup>98</sup> The first purpose was a literal purpose because it was clear from the provision, the second purpose was a further purpose since it was purpose loaded with a subjective judgment that was not expressed in the article and the third purpose was a still further purpose because fulfillment of the earlier purposes was described to lead to its fulfillment.<sup>99</sup>

75 In that regard, it is appropriate to observe that, for the purposes of applying Article 19(1) of the Sixth Directive, an increase of the amount of the turnover relating to transactions in respect of which VAT is not deductible leads to a decrease in the amount of VAT which the taxable person may deduct. The purpose of excluding certain incidental transactions from the denominator of the fraction used to calculate the deductible proportion, in accordance with the second sentence of Article 19(2), is to neutralise the negative effects for the taxable person of that consequence inherent in the said calculation in order to avoid such transactions distorting that calculation and to thus meet the objective of neutrality guaranteed by the common system of VAT.<sup>100</sup>

Regarding article 19(2), the purpose of exclusion of certain unusual transactions from pro rata calculations was to make sure the deductible proportion would have "real significance"<sup>101</sup> and the purposes of exclusion of incidental financial transactions were to not to create misrepresentative calculations of deductions and to meet the purpose of neutrality of VAT.<sup>102</sup> In addition a fourth purpose was harmonization of rules on calculation of the deductible proportion of input VAT.<sup>103</sup> The first purpose was not stated in the provision and was thus a further purpose.<sup>104</sup> The second purpose involves a value judgment that was not in the

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<sup>96</sup> C-488/07 Royal Bank of Scotland, para 24.

<sup>97</sup> C-488/07 Royal Bank of Scotland, para 26.

<sup>98</sup> C-77/01 EDM, para 75.

<sup>99</sup> Compare Sixth Directive art 19(1) and the second sentence of 19(2) with C-77/01 EDM, para 75.

<sup>100</sup> C-77/01 EDM, para 75.

<sup>101</sup> C-98/07 Nordania Finans and BG Factoring, para 22.

<sup>102</sup> C-98/07 Nordania Finans and BG Factoring, para 22-23.

<sup>103</sup> C-98/07 Nordania Finans and BG Factoring, para 34.

<sup>104</sup> Compare Sixth Directive art 19(2) and C-98/07 Nordania Finans and BG Factoring, para 22-23.



provision and was thus also a further purpose. The third purpose was not mentioned in the article and it was a final purpose made possible by the second purpose. If the second concrete purpose had not been met then the third more abstract purpose would not have been met either and thus the third purpose was a still further purpose. The fourth purpose was not apparent from the provision, which mentions options for Member States, thus it was a further purpose.<sup>105</sup> In this case four purposes were needed to be considered to reach a judgment. Also note that “intention” seems to have been used as a synonym to “purpose”.<sup>106</sup>

22 The objective of Article 19(2) is apparent from the Explanatory Memorandum to the proposal for the Sixth Directive, which was submitted by the Commission of the European Communities to the Council of the European Communities on 29 June 1973 (see *Bulletin of the European Communities*, supplement 11/73, p. 19), according to which ‘[t]he factors mentioned in this paragraph must be excluded from the calculation of the proportion lest, being unrepresentative of the taxable person’s business activity, they should deprive the amount of any real significance. Such is the case with sales of capital items and real estate and financial transactions which are only ancillary operations, that is to say are only of secondary importance in relation to the total turnover of the business. These factors are only excluded if they are not part of the usual business activity of the taxable person’.<sup>107</sup>

23 In that regard, the Court has already held that the purpose of excluding incidental financial transactions from the denominator of the fraction used to calculate the deductible proportion in accordance with Article 19 of the Sixth Directive is to comply with the objective of complete neutrality guaranteed by the common system of VAT. If all receipts from a taxable person’s financial transactions linked to a taxable activity were to be included in that denominator, even where the creation of such receipts did not entail the use of goods or services subject to VAT or, at least, entailed only their very limited use, calculation of the deduction would be distorted (Case C-306/94 *Régie dauphinoise* [1996] ECR I-3695, paragraph 21).<sup>108</sup>

34 Secondly, that right cannot be conferred on the Member States in respect of the application of the rules for the calculation of the proportion set out in Article 19(2) of the Sixth Directive without thereby failing to have regard to the intention of the Community legislature, expressed in the 12th recital in the preamble to that directive, that the proportion should be calculated in a similar manner in all the Member States.<sup>109</sup>

In a later case article 19(2) of the Sixth Directive confirmed that the purpose of exclusion of specific unusual transactions from pro rata calculations was to make sure that the deductible proportion would have “real significance”.<sup>110</sup> That purpose was not stated in the provision and was thus a further purpose.<sup>111</sup> Only one purpose was needed know to reach a judgment.

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<sup>105</sup> Compare Sixth Directive art 19(2) and C-98/07 *Nordania Finans and BG Factoring*, para 34.

<sup>106</sup> Compare Sixth Directive art 19(2) and C-98/07 *Nordania Finans and BG Factoring*, para 34.

<sup>107</sup> C-98/07 *Nordania Finans and BG Factoring*, para 22.

<sup>108</sup> C-98/07 *Nordania Finans and BG Factoring*, para 23.

<sup>109</sup> C-98/07 *Nordania Finans and BG Factoring*, para 34.

<sup>110</sup> C-174/08 *NCC Construction Danmark*, para 30.

<sup>111</sup> Compare Sixth Directive art 19(2) and C-174/08 *NCC Construction Danmark*, para 30.

30 As regards, next, the objective of Article 19(2), this is, in particular, apparent from the Explanatory Memorandum to the proposal for the Sixth Directive, which was submitted by the Commission of the European Communities to the Council of the European Communities on 29 June 1973 (see Bulletin of the European Communities, supplement 11/73, p. 20). In the words of that Memorandum ‘[t]he factors mentioned in this paragraph must be excluded from the calculation of the proportion lest, being unrepresentative of the taxable person’s business activity, they should deprive the amount of any real significance. Such is the case with sales of capital items and real estate and financial transactions which are only ancillary operations, that is to say are only of secondary importance in relation to the total turnover of the business. These factors are only excluded if they are not part of the usual business activity of the taxable person’.<sup>112</sup>

In connection with article 22(3)(c) in the Sixth Directive, an aim of the Sixth Directive was that national government tax agencies should supervise the administration of VAT.<sup>113</sup> That purpose was not expressed in the text of the provision in question.<sup>114</sup> Therefore that purpose was a further purpose.

24 That power of the Member States is consistent with one of the aims of the Sixth Directive, that of ensuring that VAT is levied and collected, under the supervision of the tax authorities (see the seventeenth recital in the preamble and Article 22(2) and (8)). In that regard, the Court held in Joined Cases 123/87 and 330/87 *Jeunehomme and EGI v Belgian State* [1988] ECR 4517, at paragraphs 16 and 17, that the Member States may require invoices to contain additional information to ensure the correct levying of VAT and permit supervision by the authorities, in so far as such particulars do not, by reason of their number or technical nature, render the exercise of the right to deduct input tax practically impossible or excessively difficult.<sup>115</sup>

Two purposes of article 26 in the Sixth Directive have been established to be the same as the overarching purpose of VAT, which was to harmonise the tax base in the Community leading to fiscal neutrality.<sup>116</sup> The article also had as its purpose to modify the VAT legislation to accommodate the practical needs of travel agents.<sup>117</sup> Those purposes were not stated in the article.<sup>118</sup> Harmonisation of the tax base was thus a further purpose. That would in turn lead to fulfillment of fiscal neutrality. Therefore must the second purpose have been a still further purpose. The third purpose was presented as unrelated to the other purposes and was thus a further purpose. Also note that the word “wished” apparently meant purpose.<sup>119</sup>

33 As is apparent from the ninth recital in the preamble to the Sixth Directive, the Community legislature wished the taxable base to be harmonised ‘so that the application

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<sup>112</sup> C-174/08 *NCC Construction Danmark*, para 30.

<sup>113</sup> C-85/95 *John Reisdorf*, para 23-24.

<sup>114</sup> Compare Sixth Directive art 22(3)(c) and C-85/95 *John Reisdorf*, para 23-24.

<sup>115</sup> C-85/95 *John Reisdorf*, para 24.

<sup>116</sup> C-291/03 *My Travel*, para 33.

<sup>117</sup> C-291/03 *My Travel*, para 39.

<sup>118</sup> Compare Sixth Directive art 26 and C-291/03 *My Travel*, para 33 and para 39.

<sup>119</sup> C-291/03 *My Travel*, para 33.

of the Community rate to taxable transactions leads to comparable results in all the Member States'. This harmonisation is thus intended to ensure that situations similar from an economic or commercial point of view are treated identically as regards application of the VAT system. The harmonisation thus helps to ensure the neutrality of that system.<sup>120</sup>

39 Moreover, as the Advocate General has observed in point 79 of his Opinion, although the purpose of Article 26 of the Sixth Directive is to adapt the rules applicable in respect of VAT to the specific nature of the work of a travel agent and thus reduce the practical difficulties which might hamper such work, the scheme established by that article, unlike that set up for small undertakings and farmers, is not intended to simplify the accounting requirements entailed by the normal VAT scheme. Thus, Article 26(3) provides that where transactions entrusted by the travel agent to other taxable persons are performed both inside and outside the European Community, only that part of the package price relating to transactions outside the Community is exempted. The implementation of such a provision may also require travel agents to make fairly technical apportionments of their package prices.<sup>121</sup>

The reason for article 28(2)(a) was read between the lines to be a social purpose.<sup>122</sup> It was a further purpose since it was not expressly stated in the article.<sup>123</sup> Only one purpose was mentioned. Also note that the word "reason" was used as a synonym for "purpose".<sup>124</sup>

31 With regard to the third condition to which Article 28(2)(a) of the Sixth Directive makes the introduction of a reduced rate of VAT subject, the Commission argues that, in this case, such a rate was not introduced for clearly defined social reasons and for the benefit of the final consumer. It submits that, on the contrary, the French Republic used VAT for an economic and social purpose, namely to relieve the burden on the social security system and to reduce household expenditure.<sup>125</sup>

32 Suffice it in this regard to point out that application of a reduced rate of VAT to reimbursable medicinal products clearly constitutes a social reason, inasmuch as it necessarily reduces the charges borne by the social security system, and also benefits the final consumer, whose health expenses are thereby reduced.<sup>126</sup>

The derogation in article 28(2)(a) had as its purposes to encompass those national rules which were in force before a certain date which was clear from a literal interpretation and also the social purpose to eliminate the financial burden that would have resulted from an application of the Sixth Directive without its derogations.<sup>127</sup> The first purpose was a literal purpose since it was expressed in the article.<sup>128</sup> The second purpose was a further purpose, because it was

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<sup>120</sup> C-291/03 My Travel, para 33.

<sup>121</sup> C-291/03 My Travel, para 39.

<sup>122</sup> C-481/98 Commission v. France, para 31-32.

<sup>123</sup> Compare Sixth Directive art 28(2)(a) and C-481/98 Commission v. France, para 31.

<sup>124</sup> C-481/98 Commission v. France, para 31.

<sup>125</sup> C-481/98 Commission v. France, para 31.

<sup>126</sup> C-481/98 Commission v. France, para 32.

<sup>127</sup> C-251/05 Talacre Beach Caravan Sales, para 22.

<sup>128</sup> Compare Sixth Directive art 28(2)(a) and C-251/05 Talacre Beach Caravan Sales, para 22.



not in the text of the article. Also note that the word purpose referred both to the literal meaning of the article and its intended financial effects or negative social consequences.

22 Clearly, such an interpretation of Article 28(2)(a) of the Sixth Directive would run counter to that provision's wording and purpose, according to which the scope of the derogation laid down by the provision is restricted to what was expressly covered by the national legislation on 1 January 1991. As the Advocate General observed in points 15 and 16 of her Opinion, Article 28(2)(a) of the Sixth Directive can be compared to a 'stand-still' clause, intended to prevent social hardship likely to follow from the abolition of exemptions provided for by the national legislature but not included in the Sixth Directive. Having regard to that purpose, the content of the national legislation in force on 1 January 1991 is decisive in ascertaining the scope of the supplies in respect of which the Sixth Directive allows an exemption to be maintained during the transitional period.<sup>129</sup>

In connection with article 28(3) in the Sixth Directive the objective of the Seventeenth Directive<sup>130</sup> was to lessen tax obstacles to the functioning of the internal marketplace, which would make supply of services easier and thereby make the internal market stronger.<sup>131</sup> None of the purposes were mentioned in the article and they were linked in a chain.<sup>132</sup> That means the first was a further purpose, the second a still further purpose and the third a yet still further purpose.

12 That interpretation is confirmed by the very objective of the Seventeenth Directive. The first two recitals in the preamble state that "it is important to reduce fiscal barriers to the movement of goods within the Community in order to facilitate the supply of services and thus strengthen the internal market" and that "the widest possible exemption from value-added tax for goods temporarily imported from one Member State to another will contribute towards the realization of this objective".<sup>133</sup>

The Court of Justice has used the words aim and objective as synonyms while discussing national laws:

44 Accordingly, national rules such as those at issue in the main proceedings, which place the financial responsibility for the loss of those stamps on the purchaser where tax stamps go missing, contribute to the achievement of the aim of preventing the fraudulent use of those stamps. Furthermore, those national rules do not exceed what is necessary to pursue that objective, since they do not exclude any possibility of reimbursement or offsetting in other situations, such as the loss of the stamps due to accident or force majeure.<sup>134</sup>

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<sup>129</sup> C-251/05 *Talacre Beach Caravan Sales*, para 22.

<sup>130</sup> Seventeenth Council Directive 85/362/EEC.

<sup>131</sup> C-10/87 *The Queen v. Commissioners of Customs and Excise*, para 12.

<sup>132</sup> Compare Sixth Directive art 28(3) and C-10/87 *The Queen v. Commissioners of Customs and Excise*, para 12.

<sup>133</sup> C-10/87 *The Queen v. Commissioners of Customs and Excise*, para 12.

<sup>134</sup> C-494/04 *Heintz van Landewijk*, para 44.

## 5. Summaries and conclusions on tax advantages and purposes

### 5.1 A tax advantage

Surprisingly it has been shown that it is not always advantageous to be taxed and thus allowed to deduct input VAT. The first scenario with examples one through three showed that the exempt trader in this series of examples with a constant consumer price always would make a profit of ten per cent of the consumer price, while the taxed trader would make a loss, break even or make a smaller profit than the exempt trader. The varying effect of the right to deduct input VAT clearly depended on how much input VAT there was to deduct from the VAT liability for output VAT. For the exempt trader on the other hand VAT was a cost like any other. This was true as long as the value adding processing cost was due to costs that incurred no input VAT and that they sold to consumers.

In the second scenario with examples four through six, with constant consumer prices and input VAT paid on value adding processing costs, the exempt trader made a profit of ten per cent of the consumer price, while the taxed trader who was allowed to deduct input VAT made a smaller profit than the other trader. Clearly the constant difference in profit between the traders in these three examples was due to the fact that not all output VAT was covered by deductible input VAT. This set of examples shows yet again that it would be disadvantageous to be allowed to deduct input VAT, which is highly surprising considering being allowed to deduct is an advantage in the words of the Court of Justice.<sup>135</sup>

In the third scenario with examples seven through nine the new assumption was that the traders could sell to other taxable persons who could shift forward the tax to their customers in turn, without affecting turnover. This meant that the taxed trader could charge a higher price inclusive of VAT to exactly match the ten per cent profit of exempt taxable persons. That was due to the fact that the buyer could fully shift forward input VAT without affecting turnover and thus profits. In this scenario it could be advantageous to deduct input VAT and be liable for output VAT, because if the customers could tolerate an even higher price inclusive of VAT, then the taxed trader could raise his sale price to make an even higher profit than the exempt trader.

In the fourth scenario the assumptions were that there would be input VAT on all the value adding production costs and that the buyer formally was able to fully shift forward all input VAT, but at the expense of a reduced turnover and thus a reduced profit, because his customers were final consumers who might shift their consumption to another business or exempt traders who could not deduct their input VAT or because of competition from an exempt trader. In such a case there would be pressure on the taxed trader to lower his sale price, which would reduce his profits just like in the first six examples.

Since the input VAT was the highest compared to earlier examples, the deduction of input VAT from the VAT liability was the highest compared to the first three examples and therefore the sale price of the taxed trader could be the lowest among the latter four examples. The taxed trader was to make a profit and the profit margin was included in the price,

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<sup>135</sup> Compare C-255/02 Halifax, para 80-81.

therefore the profit margin was taxed which necessarily made the taxed trader's sale price higher than that of the exempt trader. A taxed trader who was allowed to deduct input VAT was thus at a disadvantage compared to an exempt trader also when the customer was a taxable person, if the buyer was sensitive to the sale price inclusive of VAT. But if the buyer is able to fully shift forward all input VAT, without a negative impact on turnover and profits, then it was most advantageous to buy from a taxed seller. In such a case it was particularly advantageous to buy from a taxed seller who has been fully taxed on all his purchases.

However, to be allowed to deduct or get a refund of input VAT is in itself always advantageous if it is seen in isolation from liability for output VAT. If the exempt trader in the above scenarios had been allowed to deduct input VAT he would have made a bigger profit by the amount of deducted input VAT.

One conclusion is that certain exemptions that have the purpose to reduce consumer prices do have the potential to succeed.<sup>136</sup> As long as the customer is a consumer it is more advantageous for a trader to be exempt than to be taxed and allowed to deduct input VAT.

A surprising overall conclusion is that it depends on the circumstances whether or not it would be advantageous to be taxed and allowed to deduct input VAT.<sup>137</sup> In the first two scenarios with examples one through six it was more advantageous to be exempt than to be taxed and allowed to deduct input VAT. In the third scenario with examples seven through nine the profit of the traders could be the same and if the taxed customers were not sensitive to even higher prices inclusive of VAT compared to the prices at which the two traders make the same profits, then it was more advantageous to be a taxed trader who deducts input VAT. In the fourth scenario the profits were the same, but taxed traders had necessarily higher sales prices inclusive of VAT, which could be highly disadvantageous.

This poses the problem that what the Court of Justice considers an advantage it may in fact be a disadvantage. The author suggests that a simple solution that would leave the doctrine intact is to consider only whether a transaction receives the treatment for VAT purposes such as being inside or outside the scope, exempt, deductible etcetera according to the purpose of a provision. Whether or not such a treatment actually is advantageous or not for the individual taxable person can be disregarded for the purposes of applying the case law doctrine on abuse of law in the area of VAT. Hopefully national courts will not pursue individual cases of exemption from VAT which turn out to be disadvantageous though the presumption would be that they are.

## 5.2 The word purpose in case law on VAT

In case law has not only the word purpose, but also a wide range of other words has been used by the Court of Justice to refer to the same concept, although not completely consistently. The

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<sup>136</sup> Compare C-307/01 d'Ambrumenil and Dispute Resolution Services, para 58, C-106/05 L.u.P, para 25, Joined cases C-394/04 and C-395/04 Yegeia, para 23, C-262/08 Copy Gene, para 30, C-357/07 TNT Post UK, para 32-33, C-401/05 VDP Dental Laboratory, para 34, C-498/03 Kingscrest Associates and Montecello, para 30, C-174/00 Kennemer Golf & Country Club, para 19, C-540/09 Skandinaviska Enskilda Banken AB Momsgrupp, para 21, C-242/08 Swiss Re Germany Holding, para 49 and C-363/05 JP Morgan Claverhouse Investment Trust and the Association of Investment Trust Companies, para 45.

<sup>137</sup> Compare C-255/02 Halifax, para 80-81.

terms purpose and objective have been used as interchangeable words.<sup>138</sup> The word “ensure” has been used in such a way that it seems to mean either purpose or objective.<sup>139</sup> The words “meant to” has also been used in such a way that clearly the purpose of an objective is referred to.<sup>140</sup> The word “object” has been used as a synonym to “objective” in case law.<sup>141</sup> The word “purpose” has in one case been used both to refer to a literal meaning of an article and also to its intended financial effects.<sup>142</sup> In one case the words “aim” and “objective” were used as synonyms.<sup>143</sup> “Objectives” and “intended to” have been used as synonyms.<sup>144</sup> Similarly “intention” has been used as an apparent synonym to purpose.<sup>145</sup> The words “purpose” and “reason” have also been used as synonyms.<sup>146</sup> The word “wished” has also been used in such a way that it apparently meant purpose.<sup>147</sup>

Since there are many synonyms for the word purpose in the judgments of the Court of Justice, there is a reason to be alert for all such words when reading case law to find the purpose of provisions in order to know what transactions would be abusive. The different usage of the terms may simply be explained by that the court has in the context of single articles expressed different purposes using synonyms for the word purpose. Synonyms for purpose in ordinary parlance can therefore be assumed to mean purpose in the judgments of the Court of Justice as well.

### 5.3 Typology of purposes

The suggested typology was a literal purpose based on the literal meaning of a provision, a further purpose, which may have been found in a preamble, and a still further purpose. It has been confirmed that a set of rules may have literal, further and still further purposes.<sup>148</sup> A conclusion from case law is that even though subparagraphs of an article share a purpose, it may be a literal purpose for one subparagraph and a still further purpose for another.<sup>149</sup> It has been found that a provision can have more than one further purpose at the same time, when they are not linked to each other, but instead are linked to the rules.<sup>150</sup> In addition in one case there were five further purposes for exemptions, but no literal purpose.<sup>151</sup> A technical article with a fairly narrow scope or about a technical detail may have a wide further purpose that is common to many articles.<sup>152</sup>

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<sup>138</sup> Compare C-262/08 Copy Gene A/S, para 29-30 and also C-415/98 Bakcsi, para 42 and 45.

<sup>139</sup> C-74/08 PARAT Cabrio Automotive, para 23.

<sup>140</sup> C-174/08 NCC Construction Danmark, para 27.

<sup>141</sup> Compare C-291/07 Kollektivavtalsstifelsen TRR Trygghetsrådet, para 24 and 30.

<sup>142</sup> C-251/05 Talacre Beach Caravan Sales, para 22.

<sup>143</sup> C-494/04 Heintz van Landewijk, para 44.

<sup>144</sup> C-498/03 Kingscrest Associates and Montecello, para 30.

<sup>145</sup> C-98/07 Nordania Finans and BG Factoring, para 34.

<sup>146</sup> C-481/98 Commission v. France, para 31-32

<sup>147</sup> C-291/03 My Travel, para 33.

<sup>148</sup> Compare Sixth Directive art 19(1) and the second sentence of 19(2) with C-77/01 EDM, para 75.

<sup>149</sup> Article 9(3) referred to in C-168/84 Gunter Berkholtz, para 14.

<sup>150</sup> Compare Sixth Directive art 17(5) third subparagraph (a) to (d) with C-488/07 Royal Bank of Scotland, para 24 and para 26 and Compare Sixth Directive art 14 to C-127/86 Ministère public and Ministre des Finances du royaume de Belgique v. Yves Ledoux, para 11.

<sup>151</sup> Compare Sixth Directive art 14 and C-127/86 Ministère public and Ministre des Finances du royaume de Belgique v. Yves Ledoux, para 10.

<sup>152</sup> Compare Sixth Directive art 22(3)(c) and C-85/95 John Reisdorf, para 23-24.

It has also been found that another category of purpose beyond the category of still further purposes was needed in at least one case.<sup>153</sup> In order for it to be descriptive the additional purpose could be called a yet still further purpose. Thus the final typology would be a literal purpose, a further purpose, a still further purpose and a yet still further purpose.

The typology can be useful for a taxable person who does not want to abuse the law, because if the taxpayer has found only further and still further purposes of an article, then it is certain that there is at least one more purpose to comply with and that is the literal purpose. That is useful because the literal purpose can be found by reading the text of the article. Similarly if case law has not established a purpose in any of the further-purpose categories, then the taxpayer needs to and should be able to find it by considering the overall purposes of the common system of VAT as established by preambles and case law.

The Court of Justice's declarations of the purposes of individual articles and subparagraphs of articles were either based on preambles,<sup>154</sup> or seemingly only based on the text of the article have some further purposes been found to be.<sup>155</sup> Literal purposes have been based on a literal interpretation in the form of a reformulation of the statute in question.<sup>156</sup>

A taxpayer who wants to avoid abusive practices in the area of VAT could therefore, in the absence of a clearly applicable preamble and in the absence of case law that establishes the purpose of a VAT directive article, as a precaution reformulate an apparent literal purpose from a literal interpretation of an article. But that is not enough if the principle of fiscal neutrality can be invoked like in the Halifax case.<sup>157</sup> Also purposes of the further-categories need to be found.

#### **5.4 Heavy burden on taxable persons to know purposes**

The burden of taxable persons to know the purposes of VAT directive articles is made heavy by the insight that case law in one instance may give only one purpose of a provision, while in another case that same provision may have four purposes.<sup>158</sup> All case law needs to be researched in other words, which can be a tall order especially for small businesses with a small and tight budget that discourages from buying advice from tax consultants.

The Part Service case set the precedent that there may be a finding of abuse when a taxpayer enjoys a tax advantage based on one article which would be contrary to the purpose of another article.<sup>159</sup> This seems to mean that taxpayers need to know all the purposes of all VAT

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<sup>153</sup> Compare Sixth Directive art 28(3) and C-10/87 *The Queen v. Commissioners of Customs and Excise*, para 12.

<sup>154</sup> For instance regarding exemptions C-326/99 *Stichting*, para 47.

<sup>155</sup> Compare Sixth Directive art 5(6) with C-20/91 *De Jong*, para 15 and compare Sixth Directive art 5(6) with C-48/97 *Kuwait Petroleum*, para 21.

<sup>156</sup> Compare Sixth Directive art 13 to C-326/99 *Stichting*, para 57 and Compare Sixth Directive art 13B(d), art 4(3)(b) with C-461/08 *Don Bosco Onroerend Goed*, para 43

<sup>157</sup> C-255/02 *Halifax*, para 80.

<sup>158</sup> Compare C-98/07 *Nordania Finans and BG Factoring*, para 22-23, para 34 and C-174/08 *NCC Construction Danmark*, para 30.

<sup>159</sup> C-425/06 *Part Service*, para 59-60.

directive articles that are applicable as well as the purpose of national provisions to be sure they are not involved in abusive practices when they carry out transactions not yet evaluated by the Court of Justice. This puts a heavy burden on traders. Especially small undertakings for whom a tax consultancy fee would be difficult to pay seem at risk for unwittingly be guilty of abusive practice when they create a business plan that involves transactions not yet evaluated by the Court of Justice. In any transaction many VAT directive articles are involved and since that means many purposes have to be fulfilled it seems to be easy for transactions to fulfill the purpose criteria of abuse in new circumstances not yet evaluated by the Court of Justice. In closing, whether or not this difficulty for taxable persons to comply with the doctrine on abuse in the area of VAT is compatible with the principle of legal certainty could be the topic of a future paper.<sup>160</sup>

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<sup>160</sup> Compare C-17/01 *Südholz* para 34 referred to in C-255/02 *Halifax*, para 72.

## 6. Sources

### 6.1 Law

Recast VAT Directive Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

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### 6.2 Case law

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C-269/86 W. J. R. Mol v. Inspecteur der Invoerrechten en Accijnzen [1988] ECR I-362

C-10/87 The Queen v. Commissioners of Customs and Excise ex parte Tattersalls Ltd [1988] ECR I-3281

C-20/91 Pieter de Jong v Staatssecretaris van Financiën [1992] ECR I-2847

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C-174/00 Kennemer Golf & Country Club [2002] ECR I-3293

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C-438/01 Design Concept SA v. Flanders Expo SA [2003] ECR I-5617

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C-277/09 RBS Deutschland Holdings [2010] ECR-I 0000

C-540/09 Skandinaviska Enskilda Banken AB Momsgrupp v. Skatteverket [2011] ECR I-000

### **6.3 Doctrine**

Terra, B and Kajus, J, A guide to the European VAT Directives Volume 1 - Introduction to European VAT 2010, IBFD, 2010

## 7. Annex

### 7.1 General purposes of the RVD articles

In connection with article 1(2) the Court of Justice has established its literal purpose in that it was “widespread harmonization”<sup>161</sup> which the author infers from the wording of the Directive which twice mentions “the common system of value added tax.”<sup>162</sup> When the rules are the same then there is harmonization of rules. That article also expressed the principle of fiscal neutrality, which means there was one more literal purpose. Regarding the principle of fiscal neutrality expressed in article 1(2), it entails as a main rule treatment of lawful and unlawful transactions in the same way for VAT purposes.<sup>163</sup> Only when unlawful sales do not risk infringing on lawful ones are unlawful transactions not taxed:

16 The Sixth Directive, whose purpose is to achieve widespread harmonization in the area of VAT, is based on the principle of fiscal neutrality. That principle, as the Court has stated, precludes a generalized differentiation between lawful and unlawful transactions, except where, because of the special characteristics of certain products, all competition between a lawful economic sector and an unlawful sector is precluded (see Case 269/86, paragraph 18, and Case 289/86, at paragraph 20).<sup>164</sup>

17 That is not the case where there is no absolute prohibition based on the nature of the goods or their special characteristics, but where only the export of those goods to certain destinations is prohibited, because of their possible use for strategic purposes. Such a prohibition cannot, therefore, be sufficient to remove those products from the scope of the Sixth Directive.<sup>165</sup>

One of the purposes of the RVD is as a general rule to tax all economic transactions.<sup>166</sup> It was a further purpose since that purpose in this instance was not based on the words of an article.

39 It is clear from the scheme and purpose of Directive 2006/112, as well as from the place of Article 13 thereof in the common system of VAT established by the Sixth Directive, that any activity of an economic nature is, in principle, to be taxable. As a general rule and in accordance with Article 2(1) of Directive 2006/112, the supply of services for consideration, including those supplied by bodies governed by public law, is to be subject to VAT. Articles 9 and 13 of Directive 2006/112 thus give a very wide scope to VAT (see, to that effect, the judgment of 16 September 2008 in Case C-288/07 *Isle of Wight Council and Others*, not yet published in the ECR, paragraphs 25 to 28 and 38).<sup>167</sup>

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<sup>161</sup> C-111/92 Wilfried Lange, para 16.

<sup>162</sup> RVD art 1(2).

<sup>163</sup> C-111/92 Wilfried Lange, para 16.

<sup>164</sup> C-111/92 Wilfried Lange, para 16.

<sup>165</sup> C-111/92 Wilfried Lange, para 17.

<sup>166</sup> C-554/07 Commission v. Ireland, para 39.

<sup>167</sup> C-554/07 Commission v. Ireland, para 39.

## 7.2 Purposes of parts of the RVD

Regarding the first point in Annex III of the RVD, its purpose is to allow a reduced rate on food so that consumers more easily can buy it.<sup>168</sup> The purpose that certain items would be taxed at a reduced rate is a literal purpose since it is mentioned in the headline of Annex III.

52 With regard to the purpose of point 1 of Annex III, it should be noted that, in response to a written question asked by the Court, the Commission stated, without being contradicted on that point by the other parties, that the EU legislature, by drawing up Annex H to the Sixth Directive, intended that essential commodities and goods and services having social or cultural objectives may be subject to a reduced rate of VAT, provided that those goods or services pose no or little risk of distortion to competition.<sup>169</sup>

A further purpose was derived by the court when it declared the objective was to make it easier for the consumer to buy the product,<sup>170</sup> since that is not expressly mentioned in the provision.<sup>171</sup>

54 It follows from the foregoing, first, that point 1 of Annex III authorises the application of a reduced rate of VAT only in respect of live animals normally intended for use in the preparation of those foodstuffs and, second, that the objective of that provision is to facilitate the purchase of those foodstuffs by the final consumer.<sup>172</sup>

The purpose of article 20 and 138(1) was generally speaking to divide the taxing power in a clear way. In connection with intra-Community acquisition of new means of transport also regulated in article 2(1)(b)(ii), the purpose was to prevent distortion of competition.<sup>173</sup> The purpose of a clear separation of the power to tax is not expressly stated in the provisions and is therefore a further purpose.<sup>174</sup> The purpose to prevent distortion of competition was not stated in the provisions, it was described by the Court of Justice as based on the previous purpose and thus it was a still further purpose.

23 Thus, the mechanism consisting, on the one hand, in an exemption granted by the Member State of departure, of the supply giving rise to the intra-Community dispatch or transport, together with a right to deduct or reimbursement of the input VAT paid in that Member State and, on the other hand, in taxation, by the Member State of arrival, of the intra-Community acquisition, was intended to ensure a clear demarcation of the sovereignty of the Member States in matters of taxation (see, to that effect, Case C-245/04 *EMAG Handel Eder* [2006] ECR I-3227, paragraph 40).<sup>175</sup>

24 As regards, in particular, the rules pertaining to the taxation of acquisitions of new means of transport, it can be seen from recital 11 in the preamble to Directive 2006/112,

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<sup>168</sup> C-41/09 European Commission v. the Kingdom of the Netherlands para 52 and para 54.

<sup>169</sup> C-41/09 European Commission v. the Kingdom of the Netherlands para 52.

<sup>170</sup> C-41/09 European Commission v. the Kingdom of the Netherlands para 54.

<sup>171</sup> RVD Annex III.

<sup>172</sup> C-41/09 European Commission v. the Kingdom of the Netherlands para 54.

<sup>173</sup> C-84/09 X v. Skatteverket, para 21 and para 23-24.

<sup>174</sup> Compare Sixth Directive art 20 and art 138(1) to C-84/09 X v. Skatteverket, para 23-24.

<sup>175</sup> C-84/09 X v. Skatteverket, para 23.

which reiterates the content of the 11th recital in the preamble to Directive 91/680, that those rules, in addition to covering the allocation of authority to tax, aim to prevent distortions of competition between the Member States liable to result from the application of differing rates of tax. If there were no transitional arrangements, the marketing of new means of transport would tend to be confined to Member States having a low VAT rate, to the detriment of the other Member States and their taxation revenue. As the Advocate General pointed out at point 34 of her Opinion, the European Union legislature has, by Article 2(1)(b)(ii) of Directive 2006/112, made the acquisition of new means of transport not only by taxable persons and non-taxable legal persons, but also by private persons, subject to tax, inter alia because of the high value and easy transportability of those goods.<sup>176</sup>

31 The application of a time period within which the transport of the goods to the purchaser must be commenced or completed would give purchasers the option of choosing the Member State where the acquisition of a new means of transport would be taxed according to the most favourable rates and terms. Such an opportunity would jeopardise the achievement of the objective of the transitional VAT arrangements applicable to intra-Community trade in that it would deprive those Member States where the actual final consumption takes place of the tax revenue which is rightfully theirs. Leaving such a choice to purchasers would also run counter to the objective of preventing distortions of competition between Member States in trade involving new means of transport.<sup>177</sup>

Based on a preamble and case law, the purpose of derogations in the RVD is to minimize the negative impact of harmonization which may go too far.<sup>178</sup> This is an interpretation of the preamble which gives a further purpose that is not stated in the provisions themselves.<sup>179</sup>

37 As is apparent from recital 6 in the preamble to Directive 2006/112 and the case-law, the objective of the derogations from the provisions of that directive is to reduce as far as possible the negative effects for the economy and for society of harmonisation which is too restrictive (see, by analogy, Case C-251/05 *Talacre Beach Caravan Sales* [2006] ECR I-6269, paragraph 22, and Case C-309/06 *Marks & Spencer* [2008] ECR I-2283, paragraph 24).<sup>180</sup>

Article 135(1)(i) of the RVD has, based on case law, the purpose of giving MS a great degree of freedom in their treatment of gambling by non-taxable persons.<sup>181</sup> That is clearly a literal interpretation.<sup>182</sup> Though some of that freedom has been defined and seemingly extended in case law,<sup>183</sup> the RVD terms “conditions and limitations”<sup>184</sup> does correspond to a great degree

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<sup>176</sup> C-84/09 X v. Skatteverket, para 24.

<sup>177</sup> C-84/09 X v. Skatteverket, para 31.

<sup>178</sup> C-49/09 Commission v. Poland para 37.

<sup>179</sup> Compare RVD preamble, recital no 6 and RVD title XIII.

<sup>180</sup> C-49/09 Commission v. Poland para 37.

<sup>181</sup> C-58/09 Leo-Libera, para 29.

<sup>182</sup> RVD art 135(1)(i).

<sup>183</sup> C-58/09 Leo-Libera, para 29.

<sup>184</sup> RVD art 135(1)(i).

of flexibility for MS to decide how to regulate the issue. In addition the case law that seems to have extended the scope of the freedom of the MS in this area did not concern VAT.<sup>185</sup>

29 As regards, first, the purpose of the exemption at issue, it must be recalled that, so far as gambling is concerned, the Member States are not only free to lay down the conditions and limitations of the exemption provided for in Article 135(1)(i) of Directive 2006/112 (*Fischer*, paragraph 25, and *Linneweber and Akritidis*, paragraph 23), but also have a discretion which allows them to prohibit activities of that kind, totally or partially, or to restrict them and to lay down more or less rigorous procedures for controlling them (Case C-275/92 *Schindler* [1994] ECR I-1039, paragraph 61, and Case C-124/97 *Läärä and Others* [1999] ECR I-6067, paragraph 35).<sup>186</sup>

Referring to article 272(1)(d) in the RVD, the special schemes for small undertakings has the objective to sustain them and keep the administrative work connected with VAT in proportion to the tax revenue,<sup>187</sup> which is a further objective not stated in the provision.<sup>188</sup> The part of the scheme for small undertakings that is concerned relieves them of the administrative requirements of articles 213-271,<sup>189</sup> which is a literal purpose (though the current version of the RVD article refers to articles 282-292).

63 In that regard, it must be pointed out, first, that the objective which consists in guaranteeing the effectiveness of fiscal supervision in order to combat possible tax evasion, avoidance and abuse, the need for which was recalled in paragraph 57, cannot be attained in the absence of relevant data. Second, as the Advocate General stated in point 33 of her Opinion, the scheme for small undertakings provides for administrative simplifications intended to support the creation, activities and competitiveness of small undertakings, and to retain a reasonable relationship between the administrative charges connected with fiscal supervision and the very small amounts of tax to be reckoned with.<sup>190</sup>

64 Pursuant to Article 272(1)(d) of the VAT Directive, Member States may release small undertakings from all the formalities provided for in Articles 213 to 271 of that directive, which are intended to inform the tax authorities of the Member States of the activities subject to VAT in their territory.<sup>191</sup>

In connection with article 314 in the RVD, the purpose of the margin scheme has been interpreted “to be to avoid double taxation and distortions of competition between taxable persons”.<sup>192</sup> Those purposes were not stated in the margin scheme.<sup>193</sup> Only regarding

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<sup>185</sup> C-275/92 *Schindler* and C-124/97 *Läärä and others*.

<sup>186</sup> C-58/09 *Leo-Libera*, para 29.

<sup>187</sup> C-97/09 *Schmelz*, para 63.

<sup>188</sup> RVD 272(1)(d).

<sup>189</sup> C-97/09 *Schmelz*, para 63-64.

<sup>190</sup> C-97/09 *Schmelz*, para 63.

<sup>191</sup> C-97/09 *Schmelz*, para 64.

<sup>192</sup> C-203/10 *Auto Nikolovi* para 47.

<sup>193</sup> RVD art 312-325.

simplified procedures in some cases was “unjustified advantage or sustain unjustified harm.” mentioned.<sup>194</sup> Thus the purposes of the margin scheme as a whole were further purposes.

47 As is apparent from recital 51 in the preamble to Directive 2006/112, the objective of the margin scheme is to avoid double taxation and distortions of competition between taxable persons in the area of second-hand goods (see, to that effect, Case C-320/02 *Stenholmen* [2004] ECR I-3509, paragraph 25; and *Jyske Finans*, paragraphs 37 and 41).<sup>195</sup>

Furthermore the objective of article 320(1) and article 320(2) of the RVD has been clarified by the court to be to prevent fraud in situations where the regular scheme is used for importation and the margin scheme is used for resale.<sup>196</sup> This is clearly a further objective, because it is not stated in the provision.

57 As pointed out by the Commission, that literal interpretation is supported by the objective pursued by that derogating rule. That objective is to avoid the risk of fraud in situations where, having the choice between the application of the normal VAT scheme and the margin scheme, the taxable dealer opts, on importation, for that normal scheme in order to benefit from an immediate right to deduct in full the VAT payable or paid on importation, then contrives to bring the subsequent resale of imported goods within the margin scheme.<sup>197</sup>

### 7.3 Purpose of articles based on the First Directive

An overall purpose of VAT in European Law has, based on preambles, been stated to be harmonization of national rules to achieve fiscal neutrality.<sup>198</sup> In this instance it is a further purpose since it is based on a preamble and not on a literal interpretation of an article. A still further purpose is to remove that which could free market competition. Finally, a literal purpose would be the principle of fiscal neutrality, because the Court of Justice quotes a part of article two in the First Directive<sup>199</sup> in its last sentence below:

6 THAT PURPOSE , WHICH THE SECOND DIRECTIVE MENTIONS IN ITS PREAMBLE WHILST AT THE SAME TIME REFERRING TO THE FIRST DIRECTIVE, 67/227, OF THE SAME DATE ( OFFICIAL JOURNAL, ENGLISH SPECIAL EDITION 1967 , P . 14 ), IS EVIDENT FROM THE PREAMBLE TO THE LATTER DIRECTIVE, WHICH REFERS TO THE NEED TO ACHIEVE SUCH HARMONIZATION OF LEGISLATION CONCERNING TURNOVER TAXES AS WILL ELIMINATE FACTORS WHICH MAY DISTORT CONDITIONS OF COMPETITION AND THEREFORE TO SECURE NEUTRALITY IN COMPETITION, IN THE SENSE THAT WITHIN EACH COUNTRY SIMILAR GOODS SHOULD

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<sup>194</sup> RVD art 318(3).

<sup>195</sup> C-203/10 *Auto Nikolovi* para 47.

<sup>196</sup> C-203/10 *Auto Nikolovi* OOD para 57.

<sup>197</sup> C-203/10 *Auto Nikolovi* OOD para 57.

<sup>198</sup> C-89/81 *Staatssecretaris van Financiën v. Hong-Kong Trade Development Council*, para 6.

<sup>199</sup> First Council Directive 67/227/EEC, article 2.

BEAR THE SAME TAX BURDEN, WHATEVER THE LENGTH OF THE PRODUCTION AND DISTRIBUTION CHAIN.<sup>200</sup>

The Court of Justice has first explained a still further purpose: One of the purposes of the common system of VAT as laid out in the First Directive<sup>201</sup> was, based on a preamble, to create a mutual marketplace for trade akin to a national marketplace.<sup>202</sup> Then a further purpose was established: To do this taxes that varied from country to country and that could "...distort competition and hinder trade..." needed to be removed.<sup>203</sup>

7. According to the preamble to the first Council Directive (67/227/EEC) of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes (Official Journal, English special edition 1967, p. 14), the purpose of harmonization of the legislation concerning turnover taxes is to establish a common market within which there is healthy competition and whose characteristics are similar to those of a domestic market by eliminating tax differences liable to distort competition and hinder trade.<sup>204</sup>

Almost exactly the same words were used in another case regarding the same purpose and it was also based on the same preamble.<sup>205</sup> Thus the Court of Justice first explained a still further purpose and then a further purpose:

17 It is apparent from the recitals in the preamble to the First Council Directive (67/227/EEC) of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition 1967, p. 14, hereinafter 'the First Directive'), that the harmonisation of legislation concerning turnover taxes is intended to enable a common market to be established within which there is healthy competition and whose characteristics are similar to those of a domestic market by eliminating differences in the imposition of tax such as to distort competition and impede trade.<sup>206</sup>

#### 7.4 General purposes of the Sixth Directive

First some general purposes of the Sixth Directive as described by case law will be mentioned. Some of the purposes behind the Sixth Directive were according to the Court of Justice, based on preambles, the still further purpose of fiscal neutrality and the further purpose of harmonized provisions on VAT resulting in similar effects in the Member States from the tax rate:

23 That interpretation is in conformity with the principle governing the system of value-added tax according to which the factors which may lead to distortions of competition at national and Community level are to be eliminated and a tax

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<sup>200</sup> C-89/81 Staatssecretaris van Financiën v. Hong-Kong Trade Development Council, para 6.

<sup>201</sup> First Directive 67/227/EEC.

<sup>202</sup> C-252/86 Gabriel Bergandi, para 7.

<sup>203</sup> C-252/86 Gabriel Bergandi, para 7.

<sup>204</sup> C-252/86 Gabriel Bergandi, para 7.

<sup>205</sup> C-318/96 SPAR, para 17.

<sup>206</sup> C-318/96 SPAR, para 17.



which is as neutral as possible and covers all the stages of production and distribution is to be imposed. The title of the Sixth Directive, refers to a "uniform basis of assessment" of value-added tax. Furthermore, the second recital in the preamble to the directive refers to "a basis of assessment determined in a uniform manner according to Community rules" and the ninth recital specifies that "the taxable base must be harmonized so that the application of the Community rate ... leads to comparable results in all the Member States ". It follows that the system of value-added tax is concerned principally with objective effects, whatever the intentions of the taxable person may be.<sup>207</sup>

Some of the objectives of the common system of VAT have been declared to be to integration of national economies and successful abolition of restriction on free movement.<sup>208</sup> Since those objectives were not stated in the article the Court of Justice discussed, they were further purposes.<sup>209</sup> They could be seen as sequential in the sense that one purpose could be the basis for another, but the Court of Justice did not phrase the purposes in such a way. Therefore both purposes were further purposes.

24 FURTHERMORE , IT SHOULD BE NOTED THAT ACCORDING TO ARTICLE 14 THE NATIONAL PROVISIONS IN QUESTION ARE TO BE MAINTAINED IN FORCE ' ON MATTERS RELATED TO ' THE EXEMPTIONS PROVIDED FOR BY THE COMMUNITY RULES AND ARE TO BE ADAPTED TO MINIMIZE CASES OF DOUBLE IMPOSITION OF VALUE-ADDED TAX WITHIN THE COMMUNITY. THOSE REQUIREMENTS MUST IN TURN BE VIEWED IN THE LIGHT OF ONE OF THE OBJECTIVES OF THE HARMONIZATION OF VALUE-ADDED TAX WHICH IS, AS STATED IN THE THIRD RECITAL IN THE PREAMBLE TO THE SIXTH DIRECTIVE, TO MAKE FURTHER PROGRESS IN THE EFFECTIVE REMOVAL OF RESTRICTIONS ON THE MOVEMENT OF PERSONS AND GOODS AND THE INTEGRATION OF NATIONAL ECONOMIES.<sup>210</sup>

In the same case, freedom of movement easier was mentioned again as a fundamental purpose, but also the purpose to avoid double taxation.<sup>211</sup> Since those fundamental purposes were not expressed in the text of article 14 that was being discussed by the Court of Justice they were further purposes.<sup>212</sup> Avoidance of double taxation was mentioned in article 14(2) as an allowed purpose for temporary changes to national rules, until certain proposals by the Commission would be adopted. However that purpose was not described in the article as a fundamental purpose of VAT.

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<sup>207</sup> Joined cases C-138/86 and 139/86, para 23.

<sup>208</sup> C-249/84 Venceslas Profant, para 24.

<sup>209</sup> Compare Sixth Directive art 14 and C-249/84 Venceslas Profant, para 24.

<sup>210</sup> C-249/84 Venceslas Profant, para 24.

<sup>211</sup> C-249/84 Venceslas Profant, para 25.

<sup>212</sup> Compare Sixth Directive article 14 and C-249/84 Venceslas Profant, para 25.



25 THOSE CONSIDERATIONS SHOW THAT THE AUTHORITIES OF THE MEMBER STATES DO NOT ENJOY A COMPLETE DISCRETION IN IMPLEMENTING THE EXEMPTIONS UNDER ARTICLE 14 OF THE SIXTH COUNCIL DIRECTIVE, FOR THEY HAVE TO OBSERVE THE FUNDAMENTAL OBJECTIVES OF THE HARMONIZATION OF VALUE-ADDED TAX SUCH AS, IN PARTICULAR, TO FACILITATE THE FREE MOVEMENT OF PERSONS AND GOODS AND TO PREVENT CASES OF DOUBLE TAXATION.<sup>213</sup>

The objective of creating “a common system of VAT”<sup>214</sup> was accomplished by the Second<sup>215</sup> and the Sixth Directives<sup>216</sup> and since the phrase of the objective is in the very name of the Sixth Directive<sup>217</sup> it should be called a literal purpose:

18 The introduction of a common system of VAT was achieved by the Second Council Directive (67/228/EEC) of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes - Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967, p. 16, hereinafter ‘the Second Directive’), and by the Sixth Directive. That system was to contribute to the attainment of that objective by introducing, on a basis common to all the Member States, a general tax on consumption levied on the supply of goods, the provision of services, and imports of goods in proportion to their price, regardless of the number of transactions carried out as far as the final consumer, the tax being imposed only on the value added at each stage and being definitively borne by the final consumer.<sup>218</sup>

A literal purpose was for the new common system to take the place of similar earlier national taxes:

19 In order to attain the objective of ensuring equal conditions of taxation for the same transaction, no matter in which Member State it is carried out, the common system of VAT was intended, according to the preamble to the Second Directive, to replace the turnover taxes in force in Member States.<sup>219</sup>

That VAT should be a tax on consumption and only be a financial burden on the final consumer has been confirmed by later case law.<sup>220</sup> Since no article was mentioned by the court as evidence, it was a further purpose:

30 It is to be remembered that the basic principle of VAT is that it is a consumption tax

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<sup>213</sup> C-249/84 Venceslas Profant, para 25.

<sup>214</sup> C-318/96 SPAR, para 18.

<sup>215</sup> Second Directive 67/228/EEC.

<sup>216</sup> Sixth Directive 77/388/EEC.

<sup>217</sup> Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of legislation of Member States concerning turnover taxes – Common system of value added tax: uniform basis of assessment.

<sup>218</sup> C-318/96 SPAR, para 18.

<sup>219</sup> C-318/96 SPAR, para 19.

<sup>220</sup> C-291/03 My travel, para 30.

designed to be borne only by the final consumer. VAT is precisely proportional to the price of the goods and services and it is collected by taxable persons at each stage of the production or distribution process on behalf of the tax authorities, to which they are required to pay it. In accordance with the basic principle of that system and the detailed rules for its operation, the VAT to be levied by the tax authorities must be equal to the tax actually collected from the final consumer (see, to this effect, Case C-317/94 *Elida Gibbs* [1996] ECR I-5339, paragraphs 18 to 24). The conditions governing the application of the special scheme established by Article 26 of the Sixth Directive for travel agents and tour operators when the taxable person supplies to the traveller in return for a package price both services bought in from third parties and in-house services should not call into question that basic principle of the VAT system.<sup>221</sup>

In another case the text of the directive showed the literal purpose “to establish a uniform basis”,<sup>222</sup> seemingly fiscal neutrality was a further purpose, to make the system of collection of tax and deductions the same in the MS was a still further purpose based on a preamble:

42 It is clear from the Sixth Directive as a whole that it is intended to establish a uniform basis so as to guarantee the neutrality of the system and, as indicated in the 12th recital in its preamble, to harmonize the rules governing deductions ‘to the extent that they affect the actual amounts collected’ and to ensure that ‘the deductible proportion [is] calculated in a similar manner in all the Member States’.<sup>223</sup>

The purpose of the Sixth Directive has been stated to be to establish a common ground for VAT in the Member States, which meant that the concept of taxable person was not to be defined by them.<sup>224</sup> Since no reference is made to a provision to support that interpretation it must be a further purpose in this case:

48. The next point to be made is that, without prejudice to the option which the first sentence of Article 4(3)(a) of the Sixth Directive confers upon Member States to define the words ‘land on which they stand’, the concept of ‘supply ... of buildings or parts of buildings and the land on which they stand’ cannot be defined by reference to the national law applicable in the main proceedings, given the purpose of the Sixth Directive, which is aimed at determining the basis of VAT in a uniform manner according to Community rules. Such a concept, which contributes to determining the persons who may be regarded by Member States as taxable persons by virtue of Article 4(3)(a) of the directive, must therefore be interpreted in a uniform manner in all Member States.<sup>225</sup>

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<sup>221</sup> C-291/03 *My travel*, para 30.

<sup>222</sup> Joined cases C-286/94 *Garage Molenheide*, C-340/95 *Peter Schepens*, C-401/95 *Bureau Rik Decan-Business Research & Development* and C-47/96 *Sanders BVBA*, para 42.

<sup>223</sup> Joined cases C-286/94 *Garage Molenheide*, C-340/95 *Peter Schepens*, C-401/95 *Bureau Rik Decan-Business Research & Development* and C-47/96 *Sanders BVBA*, para 42.

<sup>224</sup> C-400/98 *Breitsohl*, para 48.

<sup>225</sup> C-400/98 *Breitsohl*, para 48.

Similarly, a preamble makes it clear that the Sixth Directive was designed to make the grounds for calculations of VAT the same in the Member States and that the exemptions are to be defined at the Community level.<sup>226</sup> Since that purpose was established by reference to a preamble it was a further purpose.

29 Secondly, it is clear from the ninth and eleventh recitals in the preamble to the Sixth Directive that the directive is designed to harmonise the basis of assessment of VAT and that the exemptions from that tax constitute independent concepts of Community law which, as the Court has held, must be placed in the general context of the common system of VAT introduced by that directive (Case 235/85 *Commission v Netherlands* [1987] ECR 1471, paragraph 18, and *Stichting Uitvoering Financiële Acties*, paragraph 10).<sup>227</sup>

When interpreting article 2(1) in the Sixth Directive the Court of Justice found, partly based on a preamble and partly on the EEC treaty, that the directive had the objective of “harmonisation or approximation”<sup>228</sup> of national laws to promote a mutual marketplace and related objectives of fundamental freedoms and competition.<sup>229</sup> Since the interpretation was not based on the VAT Directive articles making the rules the same was a further purpose and the rest were still further objectives:

16. It should be observed that the Sixth Directive is based on Articles 99 and 100 of the EEC Treaty and its objective is the harmonisation or approximation of the legislation of the Member States on turnover taxes ‘in the interest of the common market’. According to the third and fourth recitals in the preamble to the directive, the establishment of a common system of value-added tax should assist the effective liberalisation of the movement of persons, goods, services and capital, the integration of national economies and also the achievement of a common market permitting fair competition and resembling a real internal market.<sup>230</sup>

The same word by word statement on the objective of the Sixth Directive as in the just mentioned case C-289/86 has been used in another case from the Court of Justice.<sup>231</sup>

14 It should be observed that the Sixth Directive is based on Articles 99 and 100 of the EEC Treaty and its objective is the harmonization or approximation of the legislation of the Member States on turnover taxes "in the interest of the common market ". According to the third and fourth recitals in the preamble to the directive, the establishment of a common system of value-added tax should assist the effective liberalization of the movement of persons, goods, services and capital, the integration of national economies, and also the achievement of a common market permitting fair competition and resembling a real internal market.<sup>232</sup>

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<sup>226</sup> C-407/07 *Stichting Centraal Begeleidingsorgaan voor de Intercollegiale Toetsing*, para 29.

<sup>227</sup> C-407/07 *Stichting Centraal Begeleidingsorgaan voor de Intercollegiale Toetsing*, para 29.

<sup>228</sup> C-289/86 *Vereniging Happy Family Rustenburgerstraat*, para 16.

<sup>229</sup> C-289/86 *Vereniging Happy Family Rustenburgerstraat*, para 16.

<sup>230</sup> C-289/86 *Vereniging Happy Family Rustenburgerstraat*, para 16.

<sup>231</sup> C-269/86 (*W. J. R. Mol*), para 14.

<sup>232</sup> C-269/86 (*W. J. R. Mol*), para 14.

Later case law has confirmed that based on a preamble, the purpose of fiscal neutrality was to help create one marketplace for all the Member States.<sup>233</sup> Since the interpretation of the purpose was only based on a preamble it was a further purpose:

45 Since, as is stated in the fourth recital in the preamble to the Sixth Directive, the purpose of the principle of fiscal neutrality is to enable the achievement of a common market permitting fair competition, the very functioning of the common market is compromised by the Italian legislation because, in Italy, it is realistic for taxable persons to hope not to be required to pay a large portion of their tax debt.<sup>234</sup>

### 7.5 Purposes of specific articles in the Sixth Directive

In connection with article three in the Sixth Directive the aim of this provision was to enhance freedom of movement, counteract double taxation and ultimately the creation of a marketplace similar to an internal market.<sup>235</sup> Since in this case the purposes were not based on a literal interpretation, freedom of movement and counteracting double taxation were further purposes and the creation of a marketplace was a still further purpose:

25 As the Court has already held, the provisions of the Directive must be interpreted in the light of the fundamental aims of the endeavour to harmonize VAT, in particular the promotion of freedom of movement for persons and goods and the prevention of double taxation (Case 249/84 Profant [1985] ECR 3237, paragraph 25; Case 127/86 Ledoux [1988] ECR 3741, paragraph 11, and Case C-297/89 Ryborg [1991] ECR I-1943, paragraph 13). In particular, account must be taken of the fact that it is stated in the preamble to the Directive that the freedom of movement of Community residents within the Community is hampered by the taxation arrangements applied to the temporary importation of certain means of transport for private or business use, that the elimination of the obstacles resulting from those taxation arrangements is particularly necessary if an economic market having features similar to those of a domestic market is to be established (Ryborg, cited above, paragraph 14).<sup>236</sup>

In the context of article 3(2) in the Sixth Directive the aim of the directive was to make sure VAT was levied and in the correct manner.<sup>237</sup> These were further purposes since they were not written in the provision in question.<sup>238</sup>

35 So, the condition laid down in Article 3(2) of the VAT Law, according to which the agreed consideration for the grant of the rights covered by that provision, plus turnover tax, must be not less than the cost price of the immovable property in question, is consonant with the aim of the Sixth Directive to ensure that VAT is actually collected and in the proper way, notwithstanding the fact that this condition will rarely be fulfilled in practice.<sup>239</sup>

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<sup>233</sup> C-132/06 Commission v. Italy, para 45.

<sup>234</sup> C-132/06 Commission v. Italy, para 45.

<sup>235</sup> C-389/95 Siegfried Klattner, para 25.

<sup>236</sup> C-389/95 Siegfried Klattner, para 25.

<sup>237</sup> C-326/99 Stichting, para 35.

<sup>238</sup> Compare Sixth Directive art 3(2) and C-326/99 Stichting, para 35.

<sup>239</sup> C-326/99 Stichting, para 35.

Subparagraphs two and three of article 4(5) of the Sixth Directive have the same objective – that bodies governed by public law shall in certain circumstance be “...taxable persons, even when they are acting as public authorities...”<sup>240</sup> This is a literal reading of the provision in question and thus it is a matter of a literal purpose.<sup>241</sup>

38 The second and the third subparagraphs of Article 4(5) of the Sixth Directive are, consequently, closely linked since they pursue the same objective, namely the treatment of bodies governed by public law as taxable persons, even when they are acting as public authorities. Those subparagraphs are thus subject to the same logic, by which the Community legislature intended to limit the scope of the treatment of bodies governed by public law as non-taxable persons, so that the general rule stated in Articles 2(1) and 4(1) and (2) of that directive, under which any activity of an economic nature is, in principle, to be subject to VAT, is observed.<sup>242</sup>

Similarly, subparagraph three of article 4(5) in the Sixth directive had also as its objective that public bodies that performs transactions listed in annex D should be taxable persons when they do so.<sup>243</sup> This was a literal purpose since it was evident from the text of the provision.<sup>244</sup>

35 Since, firstly, the objective of the third subparagraph of Article 4(5) of the Sixth Directive, referred to in paragraph 31 of this judgment, is to ensure that the categories of economic activity of a certain importance that are listed in Annex D, which include the supply of water, are not exempted from VAT on the ground that the service is rendered by a public body, secondly, the supply of water is characterised by making water available to the public and, finally, a mains connection is essential for making it available, it must be held that that connection forms part of the supply of water referred to in point 2 of the annex.<sup>245</sup>

The same purpose of equal taxation of consumers and taxable persons was described in another case.<sup>246</sup> It was a further purpose, because the text did not mention taxation of consumers.<sup>247</sup>

56 In that regard, it should be noted that the purpose of Article 5(6) of the Sixth Directive is, in particular, to ensure equal treatment as between a taxable person who withdraws goods from his business and an ordinary consumer who buys goods of the same type. In pursuit of that objective, Article 5(6) prevents a taxable person who has been able to deduct VAT on the purchase of goods used for his business from escaping payment of VAT when he transfers those goods from his business to private purposes and from thereby enjoying advantages to which he is not entitled by comparison with an ordinary consumer who buys

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<sup>240</sup> C-288/07 *Isle of Wight Council and Others*, para 38.

<sup>241</sup> Compare Sixth Directive, art 4(5).

<sup>242</sup> C-288/07 *Isle of Wight Council and Others*, para 38.

<sup>243</sup> C-442/05 *Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westalbien*, para 35.

<sup>244</sup> Sixth Directive art 4(5) subparagraph 3.

<sup>245</sup> C-442/05 *Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westalbien*, para 35.

<sup>246</sup> Joined cases C-322/99 and C-323/99 *Fischer and Brandenstein*, para 56.

<sup>247</sup> Compare Sixth Directive art 5(6) and Joined cases C-322/99 and C-323/99 *Fischer and Brandenstein*, para 56.

goods and pays VAT on them (see Case C-415/98 *Bakcsi* [2001] ECR I-1831, paragraph 42, and the case-law cited there).<sup>248</sup>

The purpose of article 5(6) and article 6(2) in the Sixth Directive was to treat private consumption equally regardless of whether the supplier caters to himself or others. It was a further purpose, because the articles did not mention taxation of consumers.<sup>249</sup>

23 Articles 5(6) and 6(2) of the Sixth Directive treat certain transactions for which no consideration is actually received by the taxable person as supplies of goods and provisions of services effected for consideration. The purpose of those provisions is to ensure equal treatment as between a taxable person who applies goods or services for his own private use or for that of his staff and a final consumer who acquires goods or services of the same type (see Case C-230/94 *Enkler* [1996] ECR I-4517, paragraph 35; *Fillibeck*, cited above, paragraph 25; and *Fischer and Brandenstein*, cited above, paragraph 56). In pursuit of that objective, Articles 5(6) and 6(2)(a) prevent a taxable person who has been able to deduct VAT on the purchase of goods used for his business from escaping payment of that tax when he applies those goods from his business for his own private use or that of his staff and from thereby enjoying advantages to which he is not entitled by comparison with an ordinary consumer who buys goods and pays VAT on them (see Case C-20/91 *De Jong* [1992] ECR I-2847, paragraph 15; *Enkler*, cited above, paragraph 33; *Bakcsi*, cited above, paragraph 42; and *Fischer and Brandenstein*, paragraph 56). Similarly, Article 6(2)(b) of the Sixth Directive prevents a taxable person or members of his staff from obtaining, free of tax, services provided by the taxable person for which a private individual would have to have paid VAT.<sup>250</sup>

In yet another case the same purpose of article 5(6) of equal treatment was confirmed and it was a further purpose, because consumers were not mentioned in the article.<sup>251</sup>

17 In that regard, it should be recalled that the first sentence of Article 5(6) of the Sixth Directive treats certain transactions for which no real consideration is received by the taxable person as supplies of goods effected for consideration subject to VAT, in accordance with Article 2(1) of the Sixth Directive. Under well-established case-law, the purpose of that provision is to ensure equal treatment as between a taxable person who applies goods for his own private use or for that of his staff and a final consumer who acquires goods of the same type (see, inter alia, Case C-412/03 *Hotel Scandic Gåsabäck* [2005] ECR I-743, paragraph 23 and the case-law cited).<sup>252</sup>

The purpose of article 6(2) in the Sixth Directive was to counteract tax-free private use of goods belonging to businesses whose purchase by the business was deductible.<sup>253</sup>

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<sup>248</sup> Joined cases C-322/99 and C-323/99 *Fischer and Brandenstein*, para 56.

<sup>249</sup> Compare RVD art 5(6), art 6(2) and C-412/03 *Hotel Scandic Gåsabäck*, para 23.

<sup>250</sup> C-412/03 *Hotel Scandic Gåsabäck*, para 23.

<sup>251</sup> Compare Sixth Directive art 5(6) and C-581/08 *EMI Group*, para 17.

<sup>252</sup> C-581/08 *EMI Group*, para 17.

<sup>253</sup> C-50/88 *Kühne*, para 8.

8 It is clear from the structure of the Sixth Directive that that provision is designed to prevent the non-taxation of business goods used for private purposes and therefore requires the taxation of the private use of such goods only where the tax paid on their acquisition was deductible.<sup>254</sup>

The context of article 6(2) was a wide definition of supply of services,<sup>255</sup> optional taxation of supply of service to own business,<sup>256</sup> taxation of services on behalf of others,<sup>257</sup> and optional non-taxation in certain cases.<sup>258</sup> There was also a very similar article on the supply of goods in article 5(6) in the Sixth Directive. However a comparison between the interpretation of the Court of Justice with the context and the text of the provision shows that the interpretation might as well have been completely literal, because there's nothing in the interpretation that is not in the text of article 6(2). Therefore it can be called a literal purpose.

Later case law confirmed that the literal purpose of article 6(2) was to counteract private tax-free use of goods belonging to businesses whose purchase by the business was deductible.<sup>259</sup>

33 Second, in order to prevent a taxable person who has been able to deduct VAT on the purchase of goods used for his business from escaping payment of VAT when he takes those goods away from his business for private purposes and from thereby enjoying undue advantages over an ordinary consumer who buys the goods and pays VAT on them, Article 6(2) of the Sixth Directive provides that "the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff or more generally for purposes other than those of his business where the value added tax on such goods is wholly or partly deductible" is to be treated as a supply of services for consideration (see Case C-20/91 *De Jong v Staatssecretaris van Financiën* [1992] ECR I-2847, paragraph 15, concerning Article 5(6) of the Sixth Directive, which is based on the same principle).<sup>260</sup>

That same literal purpose<sup>261</sup> of article 6(2) in the Sixth Directive was confirmed in later case law- equal treatment for taxable persons and consumers:

25. It should be recalled that the purpose of Article 6(2) of the Sixth Directive is to ensure equal treatment as between taxable persons and final consumers (see the judgment in Case C-230/94 *Enkler* [1996] ECR I-4517, paragraph 35). It is designed to prevent the non-taxation of business goods used for private purposes and of services provided free of charge by a taxable person for private purposes (see, to that effect, the judgments in Case

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<sup>254</sup> C-50/88 *Kühne*, para 8.

<sup>255</sup> Sixth council directive art 6(1).

<sup>256</sup> Sixth council directive art 6(3).

<sup>257</sup> Sixth council directive art 6(4).

<sup>258</sup> Sixth council directive art 6(5).

<sup>259</sup> Compare Sixth Directive art 6(2) and C-230/94 *Enkler*, para 33.

<sup>260</sup> C-230/94 *Enkler*, para 33.

<sup>261</sup> The stated purpose in C-258/95 *Julius Fillibeck Söhne*, para 25 is the same as C-230/94 *Enkler*, para 33 and thus it was also a literal purpose, since the purpose corresponds to the words of Sixth Directive art 6(2).



50/88 *Kühne* [1989] ECR 1925, paragraph 8, and Case C-193/91 *Mohsche* [1993] ECR I-2615, paragraph 8).<sup>262</sup>

The general (further) purpose<sup>263</sup> of avoiding conflicts of jurisdiction has been confirmed:

14 In its judgment of 4 July 1985 (*Berkholz*, cited above) the Court held that, as the seventh recital in the preamble to the directive implies, Article 9 is designed to secure the rational delimitation of the respective areas covered by national value added tax rules by determining in a uniform manner the place where services are deemed to be provided for tax purposes.<sup>264</sup>

Still later case law has confirmed that the (further) purpose of avoiding conflicts of jurisdiction applied to the whole of article 9:

10. Those rules govern, amongst other matters, the determination of the place where taxable transactions are effected, which, according to the seventh recital in the preamble to the Sixth Directive, is necessary in order to avoid conflicts concerning jurisdiction as between Member States.<sup>265</sup>

The (further) purpose of article 9(2) in the Sixth Directive has been confirmed, based on a preamble, that it was to not to have conflicts of jurisdiction:

22. Accordingly, it is necessary to determine the scope of Article 9(2) in the light of its purpose which is set out as follows in the seventh recital in the preamble to the directive:

‘... the determination of the place where taxable transactions are effected has been the subject of conflicts concerning jurisdiction as between Member States, in particular as regards supplies of goods for assembly and the supply of services;... although the place where a supply of services is effected should in principle be defined as the place where the person supplying the services has his principal place of business, that place should be defined as being in the country of the person to whom the services are supplied, in particular in the case of certain services supplied between taxable persons where the cost of the services is included in the price of the goods’.<sup>266</sup>

A fundamental purpose has in the Jürgen Dudda-case been explained to be to establish special rules for service transactions that are connected to goods.<sup>267</sup> This would be a literal purpose, since it was based a statement on establishment of the actual rules.

23 The overall purpose of Article 9(2) of the Sixth Directive is accordingly to establish a special system for services provided between taxable persons where the cost of the services is included in the price of the goods.<sup>268</sup>

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<sup>262</sup> C-258/95 *Julius Fillibeck Söhne*, para 25.

<sup>263</sup> Compare Sixth Directive preamble, recital 7, C-168/84 *Gunter Berkholz*, para 14 and C-283/84 *Trans Tirreno Express SpA*, para 14.

<sup>264</sup> C-283/84 *Trans Tirreno Express SpA*, para 14.

<sup>265</sup> C-30/89 *Commission v. French republic*, para 10.

<sup>266</sup> C-327/94 *Jürgen Dudda*, para 22.

<sup>267</sup> C-327/94 *Jürgen Dudda*, para 23.

<sup>268</sup> C-327/94 *Jürgen Dudda*, para 23.

24 There is a similar purpose underlying the first indent of Article 9(2)(c) which lays down that the place of the supply of services relating *inter alia* to artistic and entertainment activities and ancillary services is the place where those services are physically carried out. The Community legislature considered that, in so far as the supplier provides his services in the State in which such services are physically carried out and the organizer of the event charges the final consumer VAT in the same State, the VAT charged on the basis of all those services the cost of which is included in the price of the complete service paid for by the final consumer must be paid to that State and not to the State in which the supplier of the service has established his business.<sup>269</sup>

Other case law has added that there was another (further) purpose of preventing distortion of competition has also been expressed in other case law. Article 9(2)(d) has led the Court of Justice, based on a preamble, to establish that one of its aims was to restrain the reach of national law regarding supply of services and to establish exceptions to the main rule on place of supply of services:

17. The Commission's argument must be accepted. It is clear from the seventh recital in the preamble to the Sixth Directive that one of the aims of the directive was to delimit in a rational way the scope of the legislation of Member States, in particular as regards the supply of services. Thus the place where a service is supplied is in principle, for the sake of simplification, deemed to be the place where the supplier has established his business. However, according to the aforesaid recital, an exception to this general rule must be made in certain specific cases: thus in the case of the hiring-out of movable tangible property, the place of supply of the service is the place in which the goods hired out are used, in order to prevent distortions of competition which may arise from the different rates of VAT applied by the Member States.<sup>270</sup>

Still later case law has confirmed that there could be a different purpose of article 9(2)(e) – to counteract distortion of competition.<sup>271</sup> It was a further purpose because it was based on a preamble. In addition, there could also have been other purposes as well though what they were was not expressly mentioned:

27. First, it is important to note that the seventh recital indicates that VAT should be payable in the State where the recipient of services is situated *in particular* where VAT would be passed on by the recipient to its own customers. The recital therefore implies that there may be other valid objectives justifying the payment of VAT in the State of the customer which may be served by Article 9(2)(e). By way of example, a purpose which underlies a number of provisions of the Sixth Directive is the avoidance of distortions of competition resulting from differences in the level at which VAT is set from State to State. By making VAT payable on services in the State of the customer in circumstances where the VAT will not be passed on, a risk of competitive distortion arises. It cannot therefore be assumed that a narrowing of the application of Article

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<sup>269</sup> C-327/94 Jürgen Dudda, para 24.

<sup>270</sup> C-51/88 Knut Hamann, para 17.

<sup>271</sup> C-438/01 Design Concept v. Flanders Expo, para 27.

9(2)(e) in the manner suggested by the French Government would not undermine other objectives which the provision was also intended to pursue.<sup>272</sup>

Another aspect of article 9(2) of the Sixth Directive was to create special rules on the place of supply for certain transactions.<sup>273</sup> It was a literal purpose because it describes the content of the rules:

18. As is also clear from paragraphs 22 and 23 of the judgment in *Dudda*, the scope of Article 9(2) of the Sixth Directive must be determined in the light of its purpose as set out in the seventh recital in its preamble, which is to establish a special regime applying to services supplied between taxable persons where the cost of the services is included in the price of the goods.<sup>274</sup>

Article nine paragraph two has, based on a preamble, a basic purpose of determining the place of supply of services when the price of which is part of the price of goods.<sup>275</sup> Since it was a description of the content of the rules it was a literal purpose.

16 It is therefore necessary to determine the scope of Article 9(2) in the light of its purpose, which is set out as follows in the seventh recital in the preamble to the Sixth Directive:

‘... the determination of the place where taxable transactions are effected has been the subject of conflicts concerning jurisdiction as between Member States, in particular as regards supplies of goods for assembly and the supply of services; ... although the place where a supply of services is effected should in principle be defined as the place where the person supplying the services has his principal place of business, that place should be defined as being in the country of the person to whom the services are supplied, in particular in the case of certain services supplied between taxable persons where the cost of the services is included in the price of the goods’.<sup>276</sup>

17 The overall purpose of Article 9(2) of the Sixth Directive is therefore to establish a special system for services provided between taxable persons where the cost of the services is included in the price of the goods.<sup>277</sup>

18 There is a similar purpose underlying the first indent of Article 9(2)(c) of the Sixth Directive, which lays down that the place of the supply of services relating, inter alia, to artistic, sporting and entertainment activities and ancillary services is the place where those services are physically carried out. The Community legislature considered that, in so far as the supplier provides his services in the State in which such services are physically carried out and the organiser of the event charges the final consumer VAT in the same State, the VAT charged on the basis of all those services the cost of which is included in the price of the complete service paid for by that consumer must be paid to

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<sup>272</sup> C-438/01 *Design Concept v. Flanders Expo*, para 27.

<sup>273</sup> C-108/00 *Syndicat des Producteurs Indépendants*, para 18.

<sup>274</sup> C-108/00 *Syndicat des Producteurs Indépendants*, para 18.

<sup>275</sup> C-114/05 *Gillan Beach*, para 17.

<sup>276</sup> C-114/05 *Gillan Beach*, para 16.

<sup>277</sup> C-114/05 *Gillan Beach*, para 17.

that State and not to the State in which the supplier of the service has established his business (see *Dudda*, paragraph 24).<sup>278</sup>

Article eight and nine in the Sixth directive had as their objective to settle which jurisdictions shall have the right to collect tax based on rules on place of supply,<sup>279</sup> which was a further purpose based on a preamble. A still further purpose was to avoid double taxation or non-taxation:

43 As a preliminary point, it should be pointed out that Title VI of the Sixth Directive contains specific provisions for determination of the place of taxable transactions, namely Article 8 for supplies of goods and Article 9 for supplies of services. The objective pursued by those provisions within the context of the general scheme of the Sixth Directive, as the seventh recital in the preamble implies, is designed to secure the rational delimitation of the respective areas covered by national VAT rules by determining in a uniform manner the place where supplies of goods and supplies of services are deemed to be provided for tax purposes. The object of those provisions is also to avoid conflicts of jurisdiction which may result in double taxation or non-taxation (see, by analogy, Case 168/84 *Berkholz* [1985] ECR 2251, paragraph 14; Case C-452/03 *RAL (Channel Islands) and Others* [2005] ECR I-3947, paragraph 23; and Case C-58/04 *Köhler* [2005] ECR I-8219, paragraph 22).<sup>280</sup>

Article 9(2)(e) in the Sixth Directive was, based on a preamble, intended to determine the place of supply of services to be where the customer was.<sup>281</sup> It was a literal purpose because it expressed the literal meaning of the provision.

13 As may be seen from the seventh recital in the preamble to the Sixth Directive, defining the place of taxation of advertising services as the place where the person to whom the services are supplied has his principal place of business is justified by the fact that the cost of those services, supplied between taxable persons, is included in the price of the goods. The Community legislature therefore considered that, in so far as the person to whom the services are supplied customarily sells the goods or supplies the services advertised in the State where he has his principal place of business, and charges the corresponding VAT to the final consumer, the VAT based on the advertising service should itself be paid by that person to that State. This reasoning is one of the factors which must be taken into account in interpreting the term "advertising services" in Article 9(2)(e) of the Sixth Directive.<sup>282</sup>

Article 9(2) has also, based on a preamble, been found to have had the basic purpose to determine the place of supply of services the payment of which that are part of the payment for goods.<sup>283</sup> It was a literal purpose since it expressed the literal meaning:

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<sup>278</sup> C-114/05 *Gillan Beach*, para 18.

<sup>279</sup> C-111/05 *Aktiebolaget NN*, para 43.

<sup>280</sup> C-111/05 *Aktiebolaget NN*, para 43.

<sup>281</sup> C-73/92 *Commission v. Spain*, para 13.

<sup>282</sup> C-73/92 *Commission v. Spain*, para 13.

<sup>283</sup> C-377/08 *EGN B.V. – Filiale Italiana v Agenzia delle Entrate*, para 29.

29 As is apparent from the seventh recital in the preamble to the Sixth Directive, the overall purpose of Article 9(2) of that directive is to establish a special system for services provided between taxable persons where the cost of the services is included in the price of the goods (*Dudda*, paragraphs 22 and 23, and *Gillan Beach*, paragraphs 16 and 17).<sup>284</sup>

In the same case the the (further) purpose of article 9(2) was to not to have conflicts of jurisdiction and the (still further) purpose of elimination of non-taxation and double taxation was confirmed in the same case as just cited above:

27 It should be noted in that regard that Article 9 of the Sixth Directive contains rules for determining the place where services are deemed to be supplied for VAT purposes. Whereas Article 9(1) lays down a general rule in that regard, Article 9(2) sets out a number of specific instances of places where certain services are deemed to be supplied. The object of those provisions is to avoid, first, conflicts of jurisdiction which may result in double taxation, and, secondly, non-taxation (see, in particular, Case C-327/94 *Dudda* [1996] ECR I-4595, paragraph 20; Case C-291/07 *Kollektivavtalsstiftelsen TRR Trygghetsrådet* [2009] ECR I-0000, paragraph 24; and Case C-1/08 *Athesia Druck* [2009] ECR I-0000, paragraph 20).<sup>285</sup>

Regarding taxable amount, the purpose of article 11(A)(1) in the Sixth directive has been determined by the Court of Justice to be “...the taxation of everything which constitutes consideration received or to be received from the customer.”<sup>286</sup> This was a literal purpose that used the words of the VAT directive article itself.<sup>287</sup>

60 That result would appear to be contrary to the objective of Article 11A(1) of the Sixth Directive, namely the taxation of everything which constitutes consideration received or to be received from the customer.<sup>288</sup>

The purpose of article 11A(1)(a) in the Sixth Directive was to establish the same rules on taxable amount throughout the European Economic Community.<sup>289</sup> That was a further purpose as it was not clearly stated in the article itself, but instead in the preamble:

12. According to Article 11A(1)(a) of the Sixth Directive, within the territory of the country the taxable amount is, in respect of supplies of goods, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party. The purpose of that provision is therefore, as may be seen from the ninth recital in the preamble to the Sixth Directive, to harmonize the taxable amount.<sup>290</sup>

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<sup>284</sup> C-377/08 EGN B.V. – Filiale Italiana v Agenzia delle Entrate, para 29.

<sup>285</sup> C-377/08 EGN B.V. – Filiale Italiana v Agenzia delle Entrate, para 27.

<sup>286</sup> C-425/06 Part Service para 60.

<sup>287</sup> Compare Sixth Directive art 11A(1) and C-425/06 Part Service para 60.

<sup>288</sup> C-425/06 Part Service para 60.

<sup>289</sup> C-18/92 *Chaussures Bally*, para 12.

<sup>290</sup> C-18/92 *Chaussures Bally*, para 12.

Article 11A(1)(a) in the Sixth Directive had as its purpose to make the rules on taxable amount the same in the EU.<sup>291</sup> Like above, this was a further purpose based on a preamble:

23. The taxable amount of this transaction involving the supply of goods for consideration is determined by Article 11 of the Sixth Directive. As the ninth recital in the preamble to that directive states, it is for the purpose of harmonising this taxable amount that Article 11A(1)(a) of the Sixth Directive provides that the taxable amount within the territory of the country is, in respect of supplies of goods, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser or a third party for such supplies.<sup>292</sup>

Article 11(A)(1)(a) was written with the intention to make the taxable amount include all of the value of the sold item or service inclusive of subsidies.<sup>293</sup> This was a literal purpose because it was also expressed by the article in question.<sup>294</sup>

27 By providing that the taxable amount for VAT encompasses, in the cases specified by it, subsidies paid to taxable persons, Article 11(A)(1)(a) of the Sixth Directive is intended to subject the full value of goods or services to VAT and hence to prevent payment of a subsidy entailing a lower return from the tax.<sup>295</sup>

Article 11A(1)(a) was intended to make sure the taxable amount includes subsidies, which meant counteracting payment of less tax than on the full value of goods and services.<sup>296</sup> The first purpose is expressed in the text of the provision and is thus a literal purpose.<sup>297</sup> The second purpose is an inseparable aspect of the first which makes it a literal purpose and that classification is supported by reading the provision in question together with article two of the Sixth Directive.

26 By providing that the taxable amount for VAT encompasses, in the cases specified by it, subsidies paid to taxable persons, Article 11(A)(1)(a) of the Sixth Directive is intended to subject the full value of goods or services to VAT and hence to prevent payment of a subsidy entailing a lower return from the tax.<sup>298</sup>

Like in the previous case, article 11A(1)(a) was intended to include subsidies in the taxable amount and therefore to ensure the tax revenue will be correct.<sup>299</sup> Both purposes were literal purposes because they were expressed by article 11A(1)(a), directly and indirectly respectively.

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<sup>291</sup> C-34/99 Commissioners of Customs and Excise v. Primback, para 23.

<sup>292</sup> C-34/99 Commissioners of Customs and Excise v. Primback, para 23.

<sup>293</sup> C-495/01 Commission v. Finland, para 27.

<sup>294</sup> Sixth Directive art 11A(1)(a).

<sup>295</sup> C-495/01 Commission v. Finland, para 27.

<sup>296</sup> C-144/02 Commission v. Germany, para 26.

<sup>297</sup> Sixth Directive art 11A(1)(a).

<sup>298</sup> C-144/02 Commission v. Germany, para 26.

<sup>299</sup> C-381/01 Commission v. Italy, para 27.

27 By providing that the taxable amount for VAT encompasses, in the cases specified by it, subsidies paid to taxable persons, Article 11(A)(1)(a) of the Sixth Directive is intended to subject the full value of goods or services to VAT and hence to prevent payment of a subsidy entailing a lower return from the tax.<sup>300</sup>

Exactly the same statement is found in another case, which means both purposes are literal for the reasons stated above.<sup>301</sup>

31 By providing that the taxable amount for VAT encompasses, in the cases specified by it, subsidies paid to taxable persons, Article 11(A)(1)(a) of the Sixth Directive is intended to subject the full value of goods or services to VAT and hence to prevent payment of a subsidy entailing a lower return from the tax.<sup>302</sup>

In another case the only objective of Article 11A(1) that was mentioned was “the taxation of everything which constitutes consideration received or to be received from the customer”.<sup>303</sup> It was clearly a literal purpose as it can be found in the text of the provision.<sup>304</sup>

60 That result would appear to be contrary to the objective of Article 11A(1) of the Sixth Directive, namely the taxation of everything which constitutes consideration received or to be received from the customer.

In another case the purpose of article 11A(1)(a) was interpreted in the context of a purpose of the whole Sixth Directive and thus had as its objective that the taxable amount should be the same in all MS.<sup>305</sup> Since application of the article in question was mandatory – “The taxable amount shall be:” it was a literal purpose.<sup>306</sup>

28 It is clear from the Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes – Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967, p. 16) that the objective of the turnover tax is to achieve equal conditions of taxation for the same supply, no matter in which Member State it is carried out (Case C-475/03 *Banca Popolare di Cremona* [2006] ECR I-9373, paragraphs 20 and 23). In that context, the purpose of Article 11A(1)(a) of the Sixth Directive is to guarantee uniformity, in the Member States, of the amount which is to be taxable.<sup>307</sup>

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<sup>300</sup> C-381/01 *Commission v. Italy*, para 27.

<sup>301</sup> Compare C-463/02 *Commission v. Sweden*, para 31 with Sixth Directive art 2 and art 11A(1)(a).

<sup>302</sup> C-463/02 *Commission v. Sweden*, para 31.

<sup>303</sup> C-425/06 *Part Service*, para 60.

<sup>304</sup> Compare C-425/06 *Part Service*, para 60 with Sixth Directive art 11A(1)(a).

<sup>305</sup> C-484/06 *Koninklijke Ahold*, para 28.

<sup>306</sup> Sixth Directive 11A(1)(a).

<sup>307</sup> C-484/06 *Koninklijke Ahold*, para 28.



Article 11(C)(1) in the Sixth Directive sought to create neutrality for taxable persons.<sup>308</sup> That purpose was not stated in the provision in question and was thus a further purpose.<sup>309</sup>

31. Accordingly, the Court held that the taxable amount attributable to the manufacturer as a taxable person must be the amount corresponding to the price at which he sold the goods to the wholesalers or retailers, less the value of those coupons. That interpretation, it added, was borne out by Article 11(C)(1) of the Sixth Directive, which seeks to ensure the neutrality of the taxable person's position (*Elida Gibbs*, paragraphs 29 to 31).<sup>310</sup>

Title X - article 13-16 - had according to preambles number four and eleven the aim of harmonizing accrual of the fiscal revenue of the European Community in the area of VAT and to harmonize how VAT is to be calculated, which in turn facilitates a common marketplace.<sup>311</sup> On one hand article 13-16 do say that Member States “shall exempt the following”, which supports that the harmonizing purposes are literal purposes.<sup>312</sup> On the other hand are the purposes not mentioned in the texts of the articles. In addition, Member States are in the provisions given freedom to individually apply the provisions in different ways – “under conditions which they shall lay down.”<sup>313</sup> That freedom to create conditions for the application of the rules does not unequivocally lend itself to a literal interpretation that the rules shall entirely be the same in all the Member States. Thus the two harmonizing purposes are further purposes which are the basis for the still further purpose of facilitating a common marketplace.<sup>314</sup>

8 The Italian Republic claims that the exemption of certain transactions following a natural disaster does not fall within the scope of the Sixth Directive and, therefore, that the provisions of Title X of that directive relating to exemptions are not exhaustive in that respect. It adds that the aim of the provisions relating to exemptions is, according to the 11th recital in the preamble to the directive, to enable the Community's own resources to be collected in a uniform manner in all the Member States. However, in accordance with the Council's decisions, the exemption in question was organized so as to avoid any impact on own resources. Finally, it claims that the Council, by authorizing the exemption, acknowledged that it was not contrary to the Sixth Directive. The Italian Republic considers that, inasmuch as it complied fully, throughout the period, with the arrangements laid down in the annexes to the decisions, it did not infringe the provisions of the directive.<sup>315</sup>

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<sup>308</sup> C-427/98 *Commission v. Germany*, para 31.

<sup>309</sup> Sixth Directive art 11C(1)(a).

<sup>310</sup> C-427/98 *Commission v. Germany*, para 31.

<sup>311</sup> The point on uniform collection of resources was based on the eleventh recital in the preamble referred to in C-203/87 *Commission of the European Communities v. Italian Republic*, para 8 and the rest in para 9.

<sup>312</sup> Sixth Directive art 13-16.

<sup>313</sup> Sixth Directive art 13-16.

<sup>314</sup> C-203/87 *Commission of the European Communities v. Italian Republic*, para 8-9.

<sup>315</sup> C-203/87 *Commission of the European Communities v. Italian Republic*, para 8.

9 Those arguments cannot be accepted. The provisions of Title X of the Sixth Directive relating to exemptions are aimed not only at ensuring that the Community's own resources are collected in a uniform manner in all the Member States, but also at helping to achieve the overall objective of the directive which is to provide for a uniform basis of assessment of VAT so that a common market permitting fair competition and resembling a real internal market may ultimately be achieved, as is confirmed in particular by the fourth recital in the preamble to the directive. It follows that the provisions of Title X are exhaustive.<sup>316</sup>

An earlier case found that article 13 in the Sixth Directive had the purposes to list the exemptions in VAT so that the EU fiscal income gathering would be harmonized.<sup>317</sup> To list the exemptions was a literal purpose, because the list is found in the text of the article.<sup>318</sup> That was the basis for the purpose of uniform fiscal income collection, which was a further purpose because it was mentioned only in a preamble and not in the article itself.

17. As regards the purpose of the exemptions provided for by Article 13, it should be observed that that provision does not mention every activity performed in the public interest but only certain activities, which are listed and described in great detail. In that regard the preamble to the Directive merely states that 'a common list of exemptions should be drawn up so that the communities' own resources may be collected in a uniform manner in all the Member States' and does not explain why the activities listed were chosen. The Commission has observed that the Federal Republic of Germany is alone in exempting the supply of services by transport undertakings to the postal authority.<sup>319</sup>

Article 13 in the Sixth Directive had, by virtue of the exemptions being independent concepts, as its purpose a harmonized application of VAT in the MS.<sup>320</sup> This was a further purpose since it was not expressed in the article itself.<sup>321</sup>

17 According to the case-law of the Court, the exemptions provided for in Article 13 of the Sixth Directive constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another (see Case C-349/96 *CPP* [1999] ECR I-973, paragraph 15; Case C-240/99 *Skandia* [2001] ECR I-1951, paragraph 23; and *Ygeia*, paragraph 15).<sup>322</sup>

The (further) purpose of article 13 to create a harmonized application of VAT was confirmed in a later case:

24 It is settled case-law that the exemptions referred to in Article 13 of the Sixth Directive constitute independent concepts of European Union law whose purpose is to

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<sup>316</sup> C-203/87 Commission of the European Communities v. Italian Republic, para 9.

<sup>317</sup> C-107/84 Commission v. Germany, para 17.

<sup>318</sup> Compare Sixth Directive art 13 and C-107/84 Commission v. Germany, para 17.

<sup>319</sup> C-107/84 Commission v. Germany, para 17.

<sup>320</sup> C-445/05 Haderer, para 17.

<sup>321</sup> Compare Sixth Directive art 13 and C-445/05 Haderer, para 17.

<sup>322</sup> C-445/05 Haderer, para 17.

avoid divergences in the application of the VAT system as between one Member State and another (see, in particular, Case C-349/96 *CPP* [1999] ECR I-973, paragraph 15, and Case C-473/08 *Eulitz* [2010] ECR I-0000, paragraph 25).<sup>323</sup>

Article 13(A) in the Sixth Directive had as its aim to exempt only the transactions it listed.<sup>324</sup> That was clearly a literal purpose, which is clear from the title of article 13A that said "Exemptions for certain activities in the public interest"<sup>325</sup> thus only the listed transactions were to be exempted. If the word "certain"<sup>326</sup> had not been in the title, then it would not have been as clearly a literal purpose.

45. It must also be remembered that the aim of Article 13(A) of the Sixth Directive is to exempt from VAT certain activities which are in the public interest. That provision does not however provide exemption from the application of VAT for every activity performed in the public interest, but only for those which are listed and described in great detail in it (see, in particular, *Institute of the Motor Industry*, paragraph 18).<sup>327</sup>

The same conclusion that the purpose of article 13A was to exempt a limited list of transactions in the public interest was reached in a later case.<sup>328</sup> As stated above, it was a literal purpose because it was clear from the title of the provision.<sup>329</sup>

14 Moreover, the purpose of Article 13A of the Sixth Directive is to exempt from VAT certain activities which are in the public interest. However, that provision grants exemption from VAT not for every activity performed in the public interest, but only for those which are listed therein and described in great detail (Case C-8/01 *Taksatorringen* [2003] ECR I-13711, paragraph 60, and *Ygeia*, paragraph 16).<sup>330</sup>

Article 13A(1)(b) and (c) in the Sixth Directive had as their objective to lessen the price of health care.<sup>331</sup> That must be have been a further purpose since it was not stated in the provision.<sup>332</sup> Someone who was knowledgeable in VAT could have figured that out, but it was not expressed in the words of the article, thus it was a further purpose.

58. While it follows from that case-law that the 'provision of medical care' must have a therapeutic aim, it does not necessarily follow therefrom that the therapeutic purpose of a service must be confined within an especially narrow compass (see, to that effect, *Commission v France*, paragraph 23). Paragraph 40 of the judgment in *Kügler* shows

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<sup>323</sup> C-262/08 *Copy Gene A/S*, para 24.

<sup>324</sup> C-287/00 *Commission v. Germany*, para 45.

<sup>325</sup> Sixth Directive art 13A.

<sup>326</sup> *Ibid.*

<sup>327</sup> C-287/00 *Commission v. Germany*, para 45.

<sup>328</sup> C-415/04 *Kinderopvang Enschede*, para 14.

<sup>329</sup> Compare Sixth Directive art 13A and C-415/04 *Kinderopvang Enschede*, para 14.

<sup>330</sup> C-415/04 *Kinderopvang Enschede*, para 14.

<sup>331</sup> C-307/01 *d'Ambrumenil and Dispute Resolution Services*, para 58.

<sup>332</sup> Compare Sixth Directive art 13A(1)(b) and (c) with C-307/01 *d'Ambrumenil and Dispute Resolution Services*, para 58.

that medical services effected for prophylactic purposes may benefit from the exemption under Article 13A(1)(c). Even in cases where it is clear that the persons who are the subject of examinations or other medical interventions of a prophylactic nature are not suffering from any disease or health disorder, the inclusion of those services within the meaning of ‘provision of medical care’ is consistent with the objective of reducing the cost of health care, which is common to both the exemption under Article 13A(1)(b) and that under (c) of that paragraph (see *Commission v France*, paragraph 23, and *Kügler*, paragraph 29).<sup>333</sup>

Not only article 13A(1)(c), but also 13A(a) had as its objective to reduce the price of health care.<sup>334</sup> This was a further purpose because it was not expressed in the text of the article.<sup>335</sup>

25 As the Court has previously held, the exemptions provided for in Article 13A(1)(b) of the Sixth Directive and letter (c) of the same provision both have the objective of reducing the cost of health care (*Dornier*, paragraph 43; and Case C-307/01 *D’Ambrumenil and Dispute Resolution Services* [2003] ECR I-13989, paragraph 58).<sup>336</sup>

Article 13A(1)(c) had as its objective to exempt medical care provided by sufficiently qualified care givers as determined by the Member States themselves.<sup>337</sup> This was a literal purpose since it was expressed in the provision.<sup>338</sup>

37 In this respect, concerning, first, the objective pursued by Article 13A(1)(c) of the Sixth Directive, it should be noted that the condition laid down by that provision, that medical care must be provided in the exercise of the paramedical professions as defined by the Member State concerned, is to ensure that the exemption applies only to medical care provided by practitioners with the required professional qualifications (*Kügler*, paragraph 27). Consequently, not all medical care falls within the scope of such an exemption, the latter concerning only that of sufficient quality having regard to the professional training of the providers.<sup>339</sup>

Article 13A(1)(b) in the Sixth Directive was written to ensure certain health care services would not be out of reach for consumers because of their costs.<sup>340</sup> That was a further purpose since it was not stated in the provision.<sup>341</sup>

23 The exemption of activities closely related to hospital and medical care provided for in Article 13A(1)(b) of the Sixth Directive is designed to ensure that access to such care

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<sup>333</sup> C-307/01 *d’Ambrumenil and Dispute Resolution Services*, para 58.

<sup>334</sup> C-106/05 L.u.P, para 25.

<sup>335</sup> Compare Sixth Directive art 13A(a) and (c) with C-106/05 L.u.P, para 25.

<sup>336</sup> C-106/05 L.u.P, para 25.

<sup>337</sup> Joined cases C-443/04 *Solleveld* and 444/04 *van den Hout-van Eijnsbergen*, para 37.

<sup>338</sup> Compare Sixth Directive 13A(c) and Joined cases C-443/04 *Solleveld* and 444/04 *van den Hout-van Eijnsbergen*, para 37.

<sup>339</sup> Joined cases C-443/04 *Solleveld* and 444/04 *van den Hout-van Eijnsbergen*, para 37.

<sup>340</sup> Joined cases C-394/04 and C-395/04 *Diagnostiko & Therapeftiko Kentro Athinon-Ygeia AE*, para 23.

<sup>341</sup> Compare Sixth Directive art 13A(1)(b) and Joined cases C-394/04 and C-395/04 *Diagnostiko & Therapeftiko Kentro Athinon-Ygeia AE*, para 23.

is not prevented by the increased costs of providing it that would follow if it, or closely related activities, were subject to VAT (*Commission v France*, paragraph 23).<sup>342</sup>

The purpose of article 13A in the Sixth Directive was in general to motivate to engage in activities in the public interest and regarding postal services to reduce the prices for consumers.<sup>343</sup> Those purposes were not explicitly expressed in the article and were thus further purposes.<sup>344</sup>

32 Thus, as the title which Article 13A of the Sixth Directive carries, the exemptions provided for in that Article are intended to encourage certain activities in the public interest.<sup>345</sup>

33 That general objective takes the form, in the postal sector, of the more specific objective of offering postal services which meet the essential needs of the population at a reduced cost.<sup>346</sup>

Similarly the purpose of article 13A(1)(a) is to “encourage an activity in the public interest.”<sup>347</sup> That was a further purpose since it was not expressed in the text of the article.<sup>348</sup>

46 In the same way, it follows from the requirements set out in paragraph 44 of this judgment and, in particular, from the nature of the objective pursued by article 13A(1)(a), which is to encourage an activity in the public interest, that the exemption is not to apply to specific services dissociable from the service of public interest, including services which meet special needs of economic operators (see, to that effect, Case C-320/91 *Corbeau* [1993] ECR I-2533, paragraph 19).<sup>349</sup>

The general objective of making health care cheaper for consumers was the purpose of article 13A(1)(b) and (c).<sup>350</sup> That was not stated in the article and was thus a further purpose.<sup>351</sup>

43. It is apparent from the case-law that the objective of reducing the cost of medical care and making that care more accessible to individuals is common to both the exemption provided for in Article 13A(1)(b) of the Sixth Directive and that in letter (c) of the same provision (see *Commission v France*, cited above, paragraph 23; and *Kügler*, cited above, paragraph 29).<sup>352</sup>

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<sup>342</sup> Joined cases C-394/04 and C-395/04 *Diagnostiko & Therapeftiko Kentro Athinon-Ygeia AE*, para 23.

<sup>343</sup> C-357/07 *TNT Post UK*, para 32-33.

<sup>344</sup> Compare Sixth Directive art 13A and C-357/07 *TNT Post UK*, para 32-33.

<sup>345</sup> C-357/07 *TNT Post UK*, para 32.

<sup>346</sup> C-357/07 *TNT Post UK*, para 33.

<sup>347</sup> C-357/07 *TNT Post UK*, para 46.

<sup>348</sup> Compare Sixth Directive art 13A(1)(a) and C-357/07 *TNT Post UK*, para 46.

<sup>349</sup> C-357/07 *TNT Post UK*, para 46.

<sup>350</sup> C-45/01 *Christoph-Dornier-Stiftung für Klinische Psychologie*, para 43.

<sup>351</sup> Compare Sixth Directive art 13A(1)(b) and (c) with C-45/01 *Christoph-Dornier-Stiftung für Klinische Psychologie*, para 43.

<sup>352</sup> C-45/01 *Christoph-Dornier-Stiftung für Klinische Psychologie*, para 43.

Article 13A(1)(b), (c) and article 13A(1)(e) had as their objective to make medical care, including dental care, economically accessible.<sup>353</sup> That was not expressly stated in the article and thus it was a further purpose.<sup>354</sup>

34 However, that government submits that the principle of strict interpretation of exemptions is not the only one of relevance for establishing the scope of the exemptions and that both their objective and the principle of fiscal neutrality must also be taken into account. Firstly, Article 13A(1)(e) of the Sixth Directive, like Article 13A(1)(b) and (c), has the objective of preventing medical care, in this case dental care, from becoming inaccessible on account of the increased costs that would follow if that care were subject to VAT (see, to that effect, Case C-76/99 *Commission v France* [2001] ECR I-249, paragraph 23, and Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 29). That would, however, be the case if supplies of dental prostheses made by intermediaries were not exempt, as dentists, who effect exempt transactions themselves, would not be able to deduct input VAT and would, therefore, pass that tax on to their patients. Secondly, intermediaries and dental technicians effect the same supplies since it is of no account to dentists whether the supplier manufactures the dental prostheses himself or whether he subcontracts that transaction to a dental technician.<sup>355</sup>

Article 13A(1)(f) had as its purpose to exempt certain entities that has found it necessary to offer particular services in an organized way together with other entities.<sup>356</sup> That was a literal purpose because it was expressed in the text of the article.<sup>357</sup>

37 Such a restriction of the scope of that provision is not supported by the purpose of that provision, which is to create an exemption from VAT in order to avoid an entity offering certain services from being required to pay that tax when it has found it necessary to cooperate with other entities by means of a common structure set up to undertake activities essential to the provision of those services.<sup>358</sup>

Article 13A(1)(h) to (p) in the Sixth Directive had as its purpose to treat organizations that were in its scope by offering certain services not for profit but in the public interest better than others in the area of VAT.<sup>359</sup> It was a literal purpose, under the assumption that being exempt is to be treated better than those who are not exempt.<sup>360</sup>

19. Moreover, all the exemptions listed in Article 13A(1)(h) to (p) of the Sixth Directive cover organisations acting in the public interest in a social, cultural, religious or sports setting or in a similar setting. The purpose of the exemptions is therefore to

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<sup>353</sup> C-401/05 VDP Dental Laboratory, para 34.

<sup>354</sup> Compare Sixth Directive art 13A(1)(b) and C-401/05 VDP Dental Laboratory, para 34.

<sup>355</sup> C-401/05 VDP Dental Laboratory, para 34.

<sup>356</sup> C-407/07 Stichting Centraal Begeleidingsorgaan voor de Intercollegiale Toetsing, para 37.

<sup>357</sup> Compare Sixth Directive art 13A(1)(f) and C-407/07 Stichting Centraal Begeleidingsorgaan voor de Intercollegiale Toetsing, para 37.

<sup>358</sup> C-407/07 Stichting Centraal Begeleidingsorgaan voor de Intercollegiale Toetsing, para 37.

<sup>359</sup> C-174/00 Kennemer Golf & Country Club, para 19.

<sup>360</sup> Compare Sixth Directive art 13A(1)(h)to (p) and C-174/00 Kennemer Golf & Country Club, para 19.



provide more favourable treatment, in the matter of VAT, for certain organisations whose activities are directed towards non-commercial purposes.<sup>361</sup>

The objective of article 13B in the Sixth Directive was to counteract tax evasion, avoidance and abuse.<sup>362</sup> That was clearly a literal purpose as it was written in the article itself.<sup>363</sup>

76 In that connection, it must be borne in mind that, under Article 13(B) of the Sixth Directive, Member States are to exempt the leasing or letting of immovable property under conditions which they are to lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse. That wording demonstrates that preventing possible tax evasion, avoidance and abuse is an objective recognised and encouraged by the Sixth Directive.<sup>364</sup>

Article 13 B in the Sixth Directive had as its purpose to facilitate calculation of the tax base, determination of deductions and also to contribute to avert higher costs of credit for final consumers.<sup>365</sup> Those purposes were not stated in the text of the article and thus they were further purposes. There is no declaration that the purposes were hierarchical, therefore they were all further purposes.<sup>366</sup>

21 Finally, with regard to the reasons underlying the adoption of VAT exemptions for the transactions set out in Article 13B, it is apparent from the case-law of the Court that the purpose of those exemptions is to alleviate the difficulties connected with determining the tax base and the amount of VAT deductible and to avoid an increase in the cost of consumer credit (Case C-455/05 *Velvet & Steel Immobilien* [2007] ECR I-3225, paragraph 24).<sup>367</sup>

Article 13B(d) in the Sixth Directive has as one of its purposes to make sure consumers would not get a higher credit cost.<sup>368</sup> That purpose was not stated in the words of the article and therefore it was a further purpose.<sup>369</sup>

49 That interpretation is confirmed by the purpose of the exemptions provided for in that provision, which is, inter alia, to avoid an increase in the cost of consumer credit

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<sup>361</sup> C-174/00 *Kennemer Golf & Country Club*, para 19.

<sup>362</sup> Joined cases C-487/01 *Gemeente Leusden* and C-7/02 *Holin Groep*, para 76.

<sup>363</sup> Compare Sixth Directive art 13B and Joined cases C-487/01 *Gemeente Leusden* and C-7/02 *Holin Groep*, para 76.

<sup>364</sup> Joined cases C-487/01 *Gemeente Leusden* and C-7/02 *Holin Groep*, para 76.

<sup>365</sup> C-540/09 *Skandinaviska Enskilda Banken AB Momsgrupp*, para 21.

<sup>366</sup> Compare Sixth Directive article 13B and C-540/09 *Skandinaviska Enskilda Banken AB Momsgrupp*, para 21.

<sup>367</sup> C-540/09 *Skandinaviska Enskilda Banken AB Momsgrupp*, para 21.

<sup>368</sup> C-242/08 *Swiss Re Germany Holding*, para 49.

<sup>369</sup> Compare Sixth Directive art 13B(d) and C-242/08 *Swiss Re Germany Holding*, para 49.



(see *Velvet & Steel Immobilien*, paragraph 24, and the order in *Tiercé Ladbroke and Derby*, paragraph 24). Since the carrying out of the transaction at issue in the main proceedings is unrelated to such a purpose, that transaction cannot benefit from such exemptions.<sup>370</sup>

Article 13B(d)(6) in the Sixth Directive had as its purpose to make it easier to invest in investment businesses and to uphold the principle of fiscal neutrality in the context of the alternatives "...direct investment in securities and investment through undertakings for collective investment..."<sup>371</sup> Those purposes were not stated in the article and were not declared by the Court of Justice to be sequential, therefore they were both further purposes.<sup>372</sup>

45 In that regard it must be observed, first, that the purpose of the exemption, under Article 13B(d)(6) of the Sixth Directive, of transactions connected with the management of special investment funds is, particularly, to facilitate investment in securities by means of investment undertakings by excluding the cost of VAT. That provision is intended to ensure that the common system of VAT is fiscally neutral as regards the choice between direct investment in securities and investment through undertakings for collective investment (*Abbey National*, paragraph 62).<sup>373</sup>

All the purposes of harmonization of VAT must be observed when interpreting article 14 in the Sixth Directive, especially the fundamental freedoms and counteraction of double taxation.<sup>374</sup> Since those purposes were not expressed in the text of the article and because they were presented by the Court of Justice in no particular order, they were all further purposes.<sup>375</sup>

11 It should be pointed out in that regard, as the Court decided in its judgment of 3 October 1985 ( Case 249/84 *Ministère public v Profant* (( 1985 )) ECR 3237 ), that the authorities of the Member States do not enjoy a complete discretion in implementing the exemptions for imports under Article 14 of the Sixth Directive, for they must observe the fundamental objectives of the harmonization of value-added tax, such as, in particular, the encouragement of free movement of persons and goods and the prevention of double taxation. It follows that Article 14 of the Sixth Directive must be interpreted in the light of all of the fundamental rules of the Community.<sup>376</sup>

Article 15 in the Sixth Directive contributed to fulfillment of the purpose of collecting tax revenue for the Community in the same way throughout the Community and also had the aim that consumers outside the Community should not be taxed.<sup>377</sup> The purpose to collect tax

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<sup>370</sup> C-242/08 *Swiss Re Germany Holding*, para 49.

<sup>371</sup> C-363/05 *JP Morgan Fleming Claverhouse Investment Trust and the Association of Investment Trust Companies*, para 45.

<sup>372</sup> Compare Sixth Directive art 13B(d)(6) and C-363/05 *JP Morgan Fleming Claverhouse Investment Trust and the Association of Investment Trust Companies*, para 45.

<sup>373</sup> C-363/05 *JP Morgan Fleming Claverhouse Investment Trust and the Association of Investment Trust Companies*, para 45.

<sup>374</sup> C-127/86 *Ministère public and Ministre des Finances du royaume de Belgique v. Yves Ledoux*, para 11.

<sup>375</sup> Compare Sixth Directive art 14 and C-127/86 *Ministère public and Ministre des Finances du royaume de Belgique v. Yves Ledoux*, para 10.

<sup>376</sup> C-127/86 *Ministère public and Ministre des Finances du royaume de Belgique v. Yves Ledoux*, para 11.

<sup>377</sup> C-111/92 *Wilfried Lange*, para 20.

revenue in the same way in the whole Community is not stated in the text of the article and therefore that was a further purpose.<sup>378</sup> The purpose that consumers outside the Community should not be taxed is mentioned in the text of article 15(2) in certain circumstances and thus it was a literal purpose.

20 As may be seen from the 11th recital in the preamble to the Sixth Directive, that provision forms part of a common list of exemptions drawn up so that the Communities' own resources may be collected in a uniform manner in all the Member States. The aim of such exemptions is to ensure that consumers from non-Member States are not subject to VAT, since the intention is that that tax should be borne exclusively by consumers within the Community.<sup>379</sup>

Article 15 of the Sixth Directive had as its objective that exports and similar transactions should be exempt and the products should be liable for VAT in the country where they ended up for consumption.<sup>380</sup> The purpose to exempt exports and similar transactions was stated in the text of the article and was thus a literal purpose.<sup>381</sup> That exports and similar transactions should be taxed at the country of destination was not stated in the article and it was therefore a further purpose.

29 Secondly, as regards the objective pursued by Article 15 of the Sixth Directive, it should be stated that this deals with the exemption from VAT of transactions for export outside of the Community, equivalent transactions and international carriage. In the context of international business, such an exemption seeks to respect the principle that the relevant goods or services should be taxed at their place of destination. Every export and equivalent transaction should thus be exempt from VAT in order to ensure that the relevant transaction is taxed only in the place where the relevant products are consumed.<sup>382</sup>

The purpose of article 15 in the Sixth directive has been interpreted to be that exports and similar transactions should be taxed in the country of destination.<sup>383</sup> As stated above, that exports and similar transactions should be taxed at the country of destination was not explicit in the article and it was therefore a further purpose.<sup>384</sup>

16 Moreover, the interpretation set out in paragraphs 13 and 14 of this judgment is corroborated by the objective of the exemption scheme set out in Article 15 of the Sixth Directive, which, in relation to exports and like transactions and international transport, is to respect the principle that the relevant goods or services should be taxed at their place of destination (see Case C-97/06 *Navicon* [2007] ECR I-8755, paragraph 29).<sup>385</sup>

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<sup>378</sup> Compare Sixth Directive art 15 and C-111/92 *Wilfried Lange*, para 20.

<sup>379</sup> C-111/92 *Wilfried Lange*, para 20.

<sup>380</sup> C-97/06 *Navicon*, para 29.

<sup>381</sup> Compare Sixth Directive art 15 and C-97/06 *Navicon*, para 29.

<sup>382</sup> C-97/06 *Navicon*, para 29.

<sup>383</sup> C-116/10 *Feltgen and Bacino Charter Company*, para 16.

<sup>384</sup> Compare Sixth Directive art 15 and C-116/10 *Feltgen and Bacino Charter Company*, para 16.

<sup>385</sup> C-116/10 *Feltgen and Bacino Charter Company*, para 16.

Article 17 in the Sixth Directive was meant to give the right to deduct in full and create a neutral tax.<sup>386</sup> Those purposes were not clearly expressed in the text of the article since exactly which transactions gave rise to deductible VAT and what derogations applied was rather complicated.<sup>387</sup> Thus the purposes were not literal. The wording of the Court of Justice in this case shows that the right to deduct in full was a further purpose, which set the ground for the still further purpose of neutrality of taxation:

55. It should be remembered that the deduction regime provided for in that article is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities and that the common system of VAT consequently ensures complete neutrality of taxation of all economic activities which are subject to VAT, irrespective of their purpose or results (see to that effect, *inter alia*, Case C-16/00 *Cibo Participations* [2001] ECR I-6663, paragraph 27).<sup>388</sup>

Article 17-20 in the Sixth Directive were meant to give the right to fully deduct input VAT connected to economic activities and thus also had neutrality of taxation as their purpose.<sup>389</sup> Those purposes were not clearly expressed in the complicated provisions.<sup>390</sup> Since full deduction was described to give rise to neutrality of taxation was the former a further purpose and the latter a still further purpose.

50 According to settled case-law, the right to deduct provided for in Articles 17 to 20 of the Sixth Directive is an integral part of the VAT scheme and in principle may not be limited. It must be exercised immediately in respect of all the taxes charged on transactions relating to inputs (see, among others, Case C-62/93 *BP Supergas* [1995] ECR I-1883, paragraph 18, and Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 43).<sup>391</sup>

51 As the Court has repeatedly held, the deduction system is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures complete neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT (see, among others, Case 268/83 *Rompelman* [1985] ECR 655, paragraph 19; Case 50/87 *Commission v France* [1988] ECR 4797, paragraph 15; Case C-37/95 *Ghent Coal Terminal* [1998] ECR I-1, paragraph 15; and Case C-465/03 *Kretztechnik* [2005] ECR I-4357, paragraph 34).<sup>392</sup>

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<sup>386</sup> C-305/01 MKG Kraftfahrzeuge Factory, para 55.

<sup>387</sup> Compare Sixth Directive art 17 and C-305/01 MKG Kraftfahrzeuge Factory, para 55.

<sup>388</sup> C-305/01 MKG Kraftfahrzeuge Factory, para 55.

<sup>389</sup> C-63/04 Centralan Property, para 50-51.

<sup>390</sup> Compare Sixth Directive art 17-20 and C-63/04 Centralan Property, para 50-51.

<sup>391</sup> C-63/04 Centralan Property, para 50.

<sup>392</sup> C-63/04 Centralan Property, para 51.

The second subparagraph of article 17(6) had as its objective to enable Member States to temporarily keep rules that denied the right to deduct input VAT.<sup>393</sup> This was a literal purpose since the article expressly stated that purpose in the form of a rule.<sup>394</sup>

48. In this respect, first, the second subparagraph of Article 17(6) of the Sixth Directive contains a freezing (or ‘standstill’) clause which provides for the retention of national exclusions from the right to deduct VAT which were applicable before the Sixth Directive entered into force (*Ampafrance and Sanofi*, paragraph 5). The objective of that provision is to allow the Member States, pending the establishment by the Council of the Community system of exclusions from the right to deduct VAT, to maintain any rules of national law excluding the right to deduct which were actually applied by their public authorities at the date of entry into force of the Sixth Directive.<sup>395</sup>

A later case confirmed that the objective of the second subparagraph of article 17(6) of the Sixth Directive was to allow Member States to temporarily keep national rules that excluded the right to deduct if those rules were in place when the directive came into force.<sup>396</sup> It was a literal purpose because the article expressly stated that purpose in the form of a rule.<sup>397</sup>

22 The second subparagraph of Article 17(6) of the Sixth Directive contains a standstill clause which provides for the retention of national exclusions from the right to deduct VAT which were applicable before the Sixth Directive entered into force for the Member State concerned. The objective of that provision is to allow Member States, pending the establishment by the Council of the Community system of exclusions from the right to deduct VAT, to maintain any rules of national law excluding that right to deduct which were actually applied by their public authorities at the date of entry into force of the Sixth Directive (see *Metropol and Stadler*, paragraph 48; *Danfoss and AstraZeneca*, paragraphs 30 and 31; and *Magoora*, paragraph 35).<sup>398</sup>

The objective of article the second subparagraph of article 17(6) in the Sixth Directive was to allow Member States to temporarily keep national rules that excluded the right to deduct if those rules were in place when the directive came into force.<sup>399</sup> It was a literal purpose because the article expressly stated that purpose in the form of a rule.<sup>400</sup>

35 The second subparagraph of Article 17(6) of the Sixth Directive contains a ‘standstill’ clause which provides for the retention of national exclusions from the right to deduct VAT which were applicable before the Sixth Directive entered into force (*Ampafrance and Sanofi*, paragraph 5). The objective of that provision is to allow the Member States, pending the establishment by the Council of the Community system of

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<sup>393</sup> C-409/99 *Metropol Treuhand and Stadler*, para 48.

<sup>394</sup> Compare Sixth Directive art 17(6) subparagraph 2 and C-409/99 *Metropol Treuhand and Stadler*, para 48.

<sup>395</sup> C-409/99 *Metropol Treuhand and Stadler*, para 48.

<sup>396</sup> C-74/08 *PARAT Cabrio Automotive*, para 22.

<sup>397</sup> Compare Sixth Directive art 17(6) subparagraph 2 and C-74/08 *PARAT Cabrio Automotive*, para 22.

<sup>398</sup> C-74/08 *PARAT Cabrio Automotive*, para 22.

<sup>399</sup> C-414/07 *Magoora*, para 35.

<sup>400</sup> Compare Sixth Directive art 17(6) subparagraph 2 and C-414/07 *Magoora*, para 35.

exclusions from the right to deduct VAT, to maintain any rules of national law excluding the right to deduct which were actually applied by their public authorities at the date of entry into force of the Sixth Directive (*Metropol and Stadler*, paragraph 48, and *Danfoss and AstraZeneca*, paragraphs 30 and 31).<sup>401</sup>

The same interpretation that the purpose of the second subparagraph of article 17(6) was to allow Member States to temporarily keep national rules that excluded the right to deduct if those rules were in place when the directive entered into force, was also made in another case.<sup>402</sup> It was a literal purpose since the article expressly stated that purpose in the form of a rule.<sup>403</sup>

30 As the Court stated in paragraph 48 of *Metropol and Stadler*, the second subparagraph of Article 17(6) of the Sixth Directive contains a standstill clause which provides for the retention of national exclusions from the right to deduct VAT which were applicable before the Sixth Directive entered into force.<sup>404</sup>

31 The Court has explained in this respect that the objective of that provision is to allow the Member States, pending the establishment by the Council of the Community system of exclusions from the right to deduct VAT, to maintain any rules of national law excluding the right to deduct which were actually applied by their public authorities at the date of entry into force of the Sixth Directive (*Metropol and Stadler*, paragraph 48).<sup>405</sup>

Article 20 regarding adjustment of deduction of input VAT was meant to make deductions more exact, which in turn guaranteed the neutrality of VAT, the rules meant that old transactions only gave rise to the right to deduct to the degree that they caused further taxable transactions and yet another purpose was to have “a close and direct relationship between the right to deduct input VAT and the use of the goods and services concerned for taxable transactions.”<sup>406</sup> Clearly the rules, described by the Court of Justice as consequences of purposes, were a literal purpose because the rules were also expressed in the provision.<sup>407</sup> The first purpose mentioned by the Court of Justice was meant to lead to the fulfillment of another purpose and then the effect described was in actuality the rules. Thus the first purpose to make deductions more exact was a further purpose. That in turn guaranteed the neutrality of VAT, which being the next level was a still further purpose. The rules also had the purpose to create a close relationship between deduction and use of goods and services for taxable transactions. That purpose was not expressly mentioned or made clear in the lengthy and complicated provision, which made it a further purpose.

57 It follows from the foregoing that the rules laid down by the Sixth Directive in respect of adjustment are intended to enhance the precision of deductions so as to ensure the neutrality of VAT, with the result that transactions effected at an earlier stage

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<sup>401</sup> C-414/07 Magoora, para 35.

<sup>402</sup> C-371/07 Danfoss and Astra Zeneca, para 30-31.

<sup>403</sup> Compare Sixth Directive art 17(6) subparagraph 2 and C-371/07 Danfoss and Astra Zeneca, para 30-31.

<sup>404</sup> C-371/07 Danfoss and Astra Zeneca, para 30.

<sup>405</sup> C-371/07 Danfoss and Astra Zeneca, para 31.

<sup>406</sup> C-63/04 Centralan Property, para 55 and 57.

<sup>407</sup> Compare Sixth Directive art 20 and C-63/04 Centralan Property, para 57.

continue to give rise to the right to deduct only to the extent that they are used to make supplies subject to VAT. By those rules, that directive is thus intended to establish a close and direct relationship between the right to deduct input VAT and the use of the goods and services concerned for taxable transactions.<sup>408</sup>

Article 20(2) in the Sixth Directive had a time limit on the adjustment period which was designed to accommodate the economic life-span of capital goods.<sup>409</sup> That was a further purpose since it was not stated in the article.<sup>410</sup>

55 In addition, it must be observed that, since the entry into force of Directive 95/7 in May 1995, the adjustment period for capital goods in the form of immovable property may be extended to 20 years, rather than 10 years as previously. It is clear from the fifth recital in the preamble to that directive that this amendment was made precisely in order to take account of the duration of the economic life of such goods.<sup>411</sup>

Concerning adjustment of deductions for capital goods and the treatment of certain applications of goods for other purposes than for business, the Court of Justice has stated that Sixth Directive articles 20(2), 5(6) and (7) were “...intended to achieve a similar objective, namely to prevent a taxable person who has had a right to deduct from enjoying economically unjustifiable advantages...”<sup>412</sup> Since that was not expressed in the articles it must have been a further purpose.<sup>413</sup>

85 Whilst they accept that the adjustment of deductions referred to in Article 20(2) of the Sixth Directive and the treatment, under Article 5(6) and (7) of that directive, of certain transactions as supplies of goods made for consideration are two provisions intended to achieve a similar objective, namely to prevent a taxable person who has had a right to deduct from enjoying economically unjustifiable advantages, the French and United Kingdom Governments and the Commission take the view that the adjustment of the right to deduct must be made on the basis of Article 20 of the Sixth Directive rather than on that of Article 5(7) of that directive.<sup>414</sup>

Article 22(3)(a) in the Sixth Directive had as its purpose that correct amounts of VAT would be received by the fiscal authorities and also to prevent fraud.<sup>415</sup> Since those purposes were not stated in the provision, they were further purposes.<sup>416</sup>

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<sup>408</sup> C-63/04 *Centralan Property*, para 57.

<sup>409</sup> C-269/00 *Wolfgang Seeling*, para 55.

<sup>410</sup> Compare Sixth Directive art 20(2) and C-269/00 *Wolfgang Seeling*, para 55.

<sup>411</sup> C-269/00 *Wolfgang Seeling*, para 55.

<sup>412</sup> C-487/01 *Gemeente Leusden and C-7/02 Holin Groep* para 85.

<sup>413</sup> Compare Sixth Directive art 5(6) and (7) and art 20(2) with C-487/01 *Gemeente Leusden* and C-7/02 *Holin Groep* para 85.

<sup>414</sup> C-487/01 *Gemeente Leusden and C-7/02 Holin Groep* para 85.

<sup>415</sup> C-141/96 *Langhorst*, para 19-20.

<sup>416</sup> Compare Sixth Directive art 22(3)(a) and C-141/96 *Langhorst*, para 20.



20. However, as the Advocate General observes in point 29 et seq. of his Opinion, since the purpose of that provision is to ensure correct collection of the tax and to avoid fraud, there is no reason why the document in question should not be drawn up by the recipient of the goods or services, provided that it includes the information prescribed for an invoice and the taxable person who supplies the goods or services has been given the opportunity to ask, if necessary, for the information to be corrected.<sup>417</sup>

Article 22(3)(b) had as its objective the overarching purpose of the tax as a whole that the same terms for taxation of transactions should apply regardless of in which MS they take place and also the specific purpose of correct functioning of the internal market.<sup>418</sup> Those purposes were further purposes since they were not mentioned in the article in question and they were not presented in such a way that one would lead to another.<sup>419</sup>

28 It is clear from the Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes – Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967, p. 16) that the objective of the turnover tax is to achieve equal conditions of taxation for the same supply, no matter in which Member State it is carried out (Case C-475/03 *Banca Popolare di Cremona* [2006] ECR I-9373, paragraphs 20 and 23). In that context, the purpose of Article 11A(1)(a) of the Sixth Directive is to guarantee uniformity, in the Member States, of the amount which is to be taxable.<sup>420</sup>

29 The same applies to Article 22(3)(b) of the Sixth Directive, in relation to which it is evident from the fourth recital in the preamble to Directive 2001/115 that the purpose of the particulars which must appear on invoices is to ensure that the internal market functions properly. Lastly, the objective of Article 22(4) and (5) of the Sixth Directive is to ensure that the tax authority has available to it all the information required in order to calculate and collect the exact amount of tax payable.<sup>421</sup>

As was clear in the quote above, the objective of article 22(4) and (5) in the Sixth Directive was that the fiscal authorities should have the information they needed regarding determination of the amount of and collection of VAT payable.<sup>422</sup> Since the purpose of calculation of the tax was mentioned in article 22(4)(b), it was a literal purpose for that paragraph. Since that purpose was not mentioned in article 22(5) it was a further purpose of that paragraph. That the information was needed for collection of VAT was not mentioned in the article and thus that purpose was a further purpose for both article 22(4) and (5).

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<sup>417</sup> C-141/96 Langhorst, para 20.

<sup>418</sup> C-484/06 Koninklijke Ahold, para 28-29.

<sup>419</sup> Compare Sixth Directive art 22(3) (b) and C-484/06 Koninklijke Ahold, para 28-29.

<sup>420</sup> C-484/06 Koninklijke Ahold, para 28.

<sup>421</sup> C-484/06 Koninklijke Ahold, para 29.

<sup>422</sup> C-484/06 Koninklijke Ahold, para 29.



The purpose of article 22(7) was to make certain that all tax payers complied with article 22(2) and (4).<sup>423</sup> Article 22(7) expressed the purpose of compliance only in regards to certain taxable persons, but not concerning all.<sup>424</sup> Thus it was a further purpose.

59 Furthermore, according to Article 22(2) and (4) of the Sixth Directive, every taxable person is to keep accounts in sufficient detail for VAT to be applied and inspected by the tax authority and to submit a return which must set out all the information needed to calculate the tax that has become chargeable and the deductions to be made. In order to ensure that every taxable person complies with those obligations, Article 22(7) authorises Member States to take the necessary measures for that purpose, including in the case of the reverse charge procedure.<sup>425</sup>

Article 22(8) in the Sixth Directive had like the other articles in its title as its most important purpose to help create an internal market and remove fiscal borders and checkpoints between Member States.<sup>426</sup> The last purpose is clear from the text of article 22(8), which means it was a literal purpose.<sup>427</sup> The other two purposes were not mentioned in the article and were not described as having a hierarchical relationship and thus were both further purposes.

18 As the Advocate General points out in point 34 of his Opinion, the first three recitals of the preamble to Directive 91/680 show that the directive's main purpose is to complete the internal market, to eliminate fiscal frontiers between Member States and to abolish fiscal controls at internal frontiers for all transactions carried out between Member States. The purpose of the directive is not, however, to harmonize or to simplify formalities relating to purely internal transactions.<sup>428</sup>

Article 25 of the Sixth Directive aimed at creating a flat-rate compensation scheme to offset the tax on purchases farmers made.<sup>429</sup> Since that purpose was expressed in the text of the article, it was clearly a literal purpose.<sup>430</sup>

29 According to Article 25 of the Sixth Directive, the common flat-rate scheme aims to offset the tax charged on purchases of goods and services made by farmers by way of a flat-rate compensation payment to farmers who carry on their activity in an agricultural, forestry or fisheries undertaking when they supply agricultural products or provide agricultural services. That compensation is calculated by applying a percentage, which has been fixed by the Member States, to the price, excluding tax, of the goods or services supplied by the flat-rate farmer to a taxable purchaser of goods or recipient of services other than a flat-rate farmer. It is paid either by the public

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<sup>423</sup> C-95/07 and C-96/07 Ecotrade, para 59.

<sup>424</sup> Compare Sixth Directive art 22(7) and C-95/07 and C-96/07 Ecotrade, para 59.

<sup>425</sup> C-95/07 and C-96/07 Ecotrade, para 59.

<sup>426</sup> C-217/94 Eismann Alto Adige Srl, para 17-18.

<sup>427</sup> Compare Sixth Directive art 22(8) and C-217/94 Eismann Alto Adige Srl, para 18.

<sup>428</sup> C-217/94 Eismann Alto Adige Srl, para 18.

<sup>429</sup> C-321/02 Harbs, para 29.

<sup>430</sup> Compare Sixth Directive art 25(1) and C-321/02 Harbs, para 29.

authorities or by the taxable purchaser or recipient and excludes any other form of deduction of input VAT.<sup>431</sup>

Article 25 in the Sixth Directive aimed at compensating farmers for input VAT and it also had the objective to reduce complexity.<sup>432</sup> The first purpose was stated in the article and was thus a literal purpose.<sup>433</sup> Regarding the second purpose, the article does mention a simplified scheme that was regulated in article 24. But article 25 does not literally say its own purpose was simplification. Thus simplification was a further purpose.

28 Lastly, as regards examination of the objectives pursued by the common flat-rate scheme, it should be borne in mind that this responds to a need for simplification. As evidenced by paragraph 29 of *Harbs*, that scheme aims to offset the tax charged on purchases of goods and services made by farmers by way of a flat-rate compensation payment to farmers who carry on their activity in an agricultural, forestry or fisheries undertaking when they supply agricultural products or agricultural services.<sup>434</sup>

Article 26a in the Sixth Directive was intended to make sure there would be no double taxation on second hand goods and similar items.<sup>435</sup> The purpose of avoiding double taxation was not expressly mentioned in the article and thus that purpose was a further purpose.<sup>436</sup>

25 On the contrary, as Advocate General Stix-Hackl noted at point 34 of her Opinion, to exclude those supplies from the special arrangements applicable to second-hand goods would be contrary to the express intention of the legislature to avoid double taxation, as set out in the third and fifth recitals to Directive 94/5. To tax the supply by a taxable dealer of an animal such as a horse, bought from a private individual and sold on after training, on the basis of its total price would theoretically amount to double taxation since, however large that part of the price attributable to the training, part of the price would continue to represent the purchase price, including, in almost all cases, a sum paid in respect of input VAT by the private individual, which neither he nor the taxable dealer could deduct.<sup>437</sup>

In a later case article 26a in the Sixth Directive was ascribed the three objectives to make the rules in different Member States on second-hand goods and similar items more like one another, to avoid double payments of VAT and to avoid distortions of competition.<sup>438</sup> The purpose of harmonization was expressed in other terms than harmonization in article 26a(B)(1). Thus the purpose of harmonization was a literal purpose.<sup>439</sup> There was no mention of avoidance of double taxation in the article, which means that it was a further purpose. In

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<sup>431</sup> C-321/02 *Harbs*, para 29.

<sup>432</sup> C-43/04 *Stadt Sundern*, para 28.

<sup>433</sup> Compare Sixth Directive art 25 and C-43/04 *Stadt Sundern*, para 28.

<sup>434</sup> C-43/04 *Stadt Sundern*, para 28.

<sup>435</sup> C-320/02 *Stenholmen*, para 24-25.

<sup>436</sup> Compare Sixth Directive art 26a and C-320/02 *Stenholmen*, para 25.

<sup>437</sup> C-320/02 *Stenholmen*, para 25.

<sup>438</sup> C-280/04 *Jyske Finans*, para 32.

<sup>439</sup> Compare Sixth Directive art 26a and C-280/04 *Jyske Finans*, para 32.

connection with rules on calculation of the margin there was an injunction to the Member States in article 26a(B)(10) that taxable persons shall “not enjoy unjustified advantages or sustain unjustified loss.”<sup>440</sup> That was a way of saying there shall be no distortions of competition. But that requirement did not refer to all of article 26A. The rest of article 26a did not mention distortion of competition and the judgment does not indicate that there was a sequential relationship between the last two purposes, which means that avoidance of distortions of competition was also further purpose.

32 It follows from the second, third and fifth recitals of Directive 94/5 that the Community legislator sought to achieve some harmonisation of very different arrangements applicable in the Member States concerning the taxation of second-hand goods, works of art, collectors’ items or antiques in order to avoid double taxation and distortions of competition, both within those Member States and in relations between them. In the circumstances, to interpret the expression ‘with a view to resale’ as relating only to import activities would be contrary to the overall objective of putting in place uniform arrangements in the areas of second-hand goods, works of art, collectors’ items and antiques, which the Community legislature had thereby set itself. Consequently, that expression should be considered to apply also to purchases and acquisitions for the purposes of the undertaking.<sup>441</sup>

The purpose of article 27(1) of the Sixth directive was simplification of the formalities for charging the tax, to fight tax evasion and to fight tax avoidance.<sup>442</sup> All three were literal purposes, because they were all expressly mentioned in the article.<sup>443</sup>

45 It follows that exclusion of the right of an intermediate supplier, such as Vandoorne, to reimbursement of VAT in the case where the purchaser fails to pay the price for manufactured tobacco supplied to it is a consequence inherent in a scheme such as that at issue in the main proceedings, the purpose and effect of which are, pursuant to the criteria defined in Article 27(1) of the Sixth Directive, to simplify the procedure for charging VAT and to combat tax evasion or avoidance in regard to those products.<sup>444</sup>

Article 28 of the Sixth Directive had as its objective a gradually increased harmonization of national laws during an interim period.<sup>445</sup> That was a literal purpose since it was expressed in the text of the headline of the article.<sup>446</sup>

53 However, as the heading of Title XVI of the Sixth Directive and the 19th recital in the preamble to that directive indicate, the objective of Article 28 is to allow, during a transitional period, national laws in specified fields to be gradually adapted.<sup>447</sup>

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<sup>440</sup> Sixth Directive art 26a(B)(10).

<sup>441</sup> C-280/04 Jyske Finans, para 32.

<sup>442</sup> C-489/09 Vandoorne NV para 45.

<sup>443</sup> Compare Sixth Directive art 27(1) and C-489/09 Vandoorne NV para 45.

<sup>444</sup> C-489/09 Vandoorne NV para 45.

<sup>445</sup> C-462/05 Commission v. Portugal, para 53.

<sup>446</sup> Compare Sixth Directive art 28 and C-462/05 Commission v. Portugal, para 53.

<sup>447</sup> C-462/05 Commission v. Portugal, para 53.

Article 28(4) in the Sixth Directive had as its objective to eliminate exemptions.<sup>448</sup> That was a literal purpose if it is interpreted as being a possible outcome, since the article required reviews of exemptions which in turn would lead to abolishment of all, some or none.<sup>449</sup> But if the purpose is interpreted as meaning exemptions shall be removed, then it was a further purpose not expressed by the text of the article.

19. In the main proceedings, the United Kingdom is entitled, pursuant to Article 28(3)(b) of the Sixth Directive, read in conjunction with point 16 of Annex F thereto, to continue to exempt supplies of land, save as regards the various exceptions to the maintenance of the exemption listed in Group 1 of Schedule 5 to the Finance Act 1972, as supplemented by Group 1 of Schedule 6 to the 1983 Act, in the version thereof resulting from the Finance Act 1989. As the national court has found, those amendments have not widened the scope of the exemption; on the contrary, they have reduced it. Consequently, they were not adopted in disregard of the wording of Article 28(3)(b). Whilst that provision precludes the introduction of new exemptions or the extension of the scope of existing exemptions following the entry into force of the Sixth Directive, it does not prevent a reduction of those exemptions, since their abolition constitutes the objective pursued by Article 28(4) of the Sixth Directive.<sup>450</sup>

A later case confirmed that article 28(4) of the Sixth Directive had as its objective elimination of the exemptions.<sup>451</sup> That was a literal purpose if it is interpreted as being a possible outcome, since the article required reviews of exemptions which in turn would lead to abolishment of all, some or none.<sup>452</sup> But if the purpose is interpreted as meaning exemptions shall be removed, then it was a further purpose not expressed by the text of the article.

32. It must be noted at the outset that Article 28(3)(b) of the Sixth Directive, read in conjunction with Annex F thereto, clearly and unambiguously authorises Member States to continue to apply, under the same conditions, certain exemptions which were provided for in their legislation before the entry into force of the Sixth Directive. While that article consequently does not permit Member States to introduce new exemptions or extend the scope of existing exemptions following the entry into force of that directive, it does not prevent a reduction of existing exemptions, especially as their abolition constitutes the objective pursued by Article 28(4) of the directive (see Case C-136/97 *Norbury Developments v Customs and Excise* [1999] ECR I-2941, paragraph 19).<sup>453</sup>

Since an overarching purpose of the articles in the Sixth Directive under title XVIa was to make sure that the Member State where consumption would take place also would receive the tax revenue, the Court of Justice concluded that they were written to especially control intra-

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<sup>448</sup> C-136/97 *Norbury Developments*, para 19.

<sup>449</sup> Compare Sixth Directive art 28(4) and C-136/97 *Norbury Developments*, para 19.

<sup>450</sup> C-136/97 *Norbury Developments*, para 19.

<sup>451</sup> C-36/99 *Idéal Tourisme*, para 32.

<sup>452</sup> Compare Sixth Directive art 28(4) and C-36/99 *Idéal Tourisme*, para 32.

<sup>453</sup> C-36/99 *Idéal Tourisme*, para 32.

Community transports of goods.<sup>454</sup> The first purpose was a further purpose because it was not expressly stated in the provisions.<sup>455</sup> The second purpose however was a literal purpose since it was clear from the headline of title XVIa.

36 It follows from the purpose of the transitional arrangements under Title XVIa of the Sixth Directive, namely the transfer of the tax revenue to the Member State in which final consumption of the goods supplied takes place (see *EMAG Handel Eder*, paragraph 40), that those arrangements were established to govern, in particular, the movement of goods within the Community.<sup>456</sup>

## 7.6 The Eighth Directive

The Eighth Directive had as its overarching purpose to counteract tax evasion and avoidance.<sup>457</sup> Article 7(3) of that directive aimed at preventing erroneous use of old invoices. The overarching purpose would be a further purpose since it was not stated in the provision itself.<sup>458</sup> The second purpose was a literal purpose, because it was clear from the article.

28. The different wording reflects the general purpose of the Eighth Directive, which is stated in the sixth recital in the preamble as being that of preventing 'certain forms of tax evasion or avoidance' and the aim pursued in particular by Article 7(3) of the directive of preventing undertakings not established in the Member State concerned from re-using the invoice or import document to make further applications for a refund.<sup>459</sup>

The Eighth Directive had the concrete purpose to establish rules on refund of VAT to taxable persons in other Member States and the objective to harmonize the entitlement to refund that article 17(3) in the Sixth Directive gave.<sup>460</sup> The first purpose was a literal purpose, because the directive did establish such rules on refund as it was meant to.<sup>461</sup> To harmonize the rules was also a literal purpose, because the directive said that every Member State shall follow the rules of the Directive.<sup>462</sup>

20. It must be observed that, pursuant to Article 17(4) of the Sixth Directive, the purpose of the Eighth Directive is to lay down detailed arrangements for the refund of VAT paid in a Member State by taxable persons established in another Member State. Its objective is therefore to harmonise the right to refund as provided for in Article 17(3) of the Sixth Directive.<sup>463</sup>

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<sup>454</sup> C-409/04 *Teleos*, para 36.

<sup>455</sup> Compare Sixth Directive Title XVIa and C-409/04 *Teleos*, para 36.

<sup>456</sup> C-409/04 *Teleos*, para 36.

<sup>457</sup> C-361/96 *Société Générale des Grandes Sources*, para 28.

<sup>458</sup> Compare Eighth Directive and C-361/96 *Société Générale des Grandes Sources*, para 28.

<sup>459</sup> C-361/96 *Société Générale des Grandes Sources*, para 28.

<sup>460</sup> C-136/99 *Société Monte Dei Pascha Di sena*, para 20.

<sup>461</sup> Compare Eighth Directive and C-136/99 *Société Monte Dei Pascha Di sena*, para 20.

<sup>462</sup> Eighth Directive art 2.

<sup>463</sup> C-136/99 *Société Monte Dei Pascha Di sena*, para 20.

The Eighth Directive had not as its purpose to change the Sixth Directive, but to harmonize the right to refund as given by article 17(3) of the Sixth Directive.<sup>464</sup> It was a literal purpose, because the directive said that every Member State shall follow the rules of the Directive.<sup>465</sup>

25 It should be pointed out, in that regard, that it is not the purpose of the Eighth Directive to undermine the scheme introduced by the Sixth Directive (see, inter alia, Case C-302/93 *Debouche* [1996] ECR I-4495, paragraph 18).<sup>466</sup>

26 In addition, the purpose of the Eighth Directive is to lay down detailed arrangements for the refund of VAT paid in a Member State by taxable persons established in another Member State. Its objective is therefore to harmonise the right to refund as provided for in Article 17(3) of the Sixth Directive (see, inter alia, Case C-136/99 *Monte dei Paschi Di Siena* [2000] ECR I-6109, paragraph 20). As is apparent from paragraph 20 of this judgment, Articles 2 and 5 of the Eighth Directive refer expressly to Article 17 of the Sixth Directive.<sup>467</sup>

In a later case the Eighth Directive was ascribed two objectives, to avoid double taxation and to prevent tax evasion or avoidance.<sup>468</sup> Both purposes were further purposes, because they were not expressly mentioned by the articles of the directive and because they were not described to be linked in a sequential manner.<sup>469</sup>

35 As is apparent from its second recital, the main aim of that directive is to avoid a taxable person established in a Member State being subjected to double taxation by reason of his having to bear the definitive burden of a tax invoiced to him in another Member State. As the Commission of the European Communities has stated, the right of a taxable person established in a Member State to obtain refund of VAT paid in another Member State, in the manner governed by the Eighth Directive, is the counterpart of such a person's right established by the Sixth Directive to deduct input VAT in his own Member State.<sup>470</sup>

36 It follows from the sixth recital of the Eighth Directive that its other general objective is to combat certain forms of tax evasion or avoidance (see, to that effect, Case C-361/96 *Grandes sources d'eaux minérales françaises* [1998] ECR I-3495, paragraph 28).<sup>471</sup>

In a still later case the Eighth Directive and also its Annex A had as their purpose to harmonize VAT rules regarding repayment of VAT paid by taxable persons in another Member State.<sup>472</sup> Harmonization was a literal purpose because it was mentioned in one of the articles that all

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<sup>464</sup> C-35/05 *Reemtsma Cigarettenfabriken*, para 25-26.

<sup>465</sup> Compare Eighth Directive art 2 and C-35/05 *Reemtsma Cigarettenfabriken*, para 25-26.

<sup>466</sup> C-35/05 *Reemtsma Cigarettenfabriken*, para 25.

<sup>467</sup> C-35/05 *Reemtsma Cigarettenfabriken*, para 26.

<sup>468</sup> C-73/06 *Planzer Luxembourg*, para 35-36.

<sup>469</sup> Compare Eighth Directive and C-73/06 *Planzer Luxembourg*, para 35-36.

<sup>470</sup> C-73/06 *Planzer Luxembourg*, para 35.

<sup>471</sup> C-73/06 *Planzer Luxembourg*, para 36.

<sup>472</sup> C-433/08 *Yaesu Europe*, para 21-22.



Member States shall follow the rules of the directive.<sup>473</sup> Harmonization was also a literal purpose of Annex A, because taxable persons were required to follow its model.<sup>474</sup>

21 The aim of the Eighth Directive is thus to harmonise the arrangements relating to the right to a refund of VAT, as provided for in Article 17(3) 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) (see, inter alia, Case C-136/99 *Monte Dei Paschi Di Siena* [2000] ECR I-6109, paragraph 20, and Case C-35/05 *Reemtsma Cigarettenfabriken* [2007] ECR I-2425, paragraph 26).<sup>475</sup>

22 To that end, the Eighth Directive expressly provides, in Annex A thereto, a pre-established model for VAT refund applications, precisely with a view to harmonising the procedure to be followed in relation to such an application in the case of VAT paid in a Member State by taxable persons established in another Member State. However, that harmonisation objective cannot be attained unless the terms used in the specimen application form are understood in the same way in all the Member States.<sup>476</sup>

The same purpose of harmonization was confirmed in another case.<sup>477</sup> Again, it was a literal purpose, because the directive required all Member States to comply with its rules.<sup>478</sup>

32 Similarly, it is common ground that the purpose of the Eighth Directive is to lay down detailed arrangements for the refund of VAT paid in a Member State by taxable persons established in another Member State, its objective being therefore to harmonise the right to refund as provided for in Article 17(3) of the Sixth Directive (see, inter alia, Case C-136/99 *Monte dei Paschi Di Siena* [2000] ECR I-6109, paragraph 20, and Case C-35/05 *Reemtsma Cigarettenfabriken* [2007] ECR I-2425, paragraph 26); that is also the case with respect to the Thirteenth Directive as far as concerns taxable persons established in non-member countries.<sup>479</sup>

## 7.7 Purposes of Council Directive 83/182/EEC on tax exemptions on temporary imports

Case law has shown the importance of the purposes of fundamental freedoms and prevention of double taxation for interpretation of a directive<sup>480</sup> that details rules in connection with article 14 of the Sixth Directive.<sup>481</sup> The purpose of freedom of movement was only mentioned in the preamble and not in the articles of the directive and thus it was a further purpose.<sup>482</sup> Prevention of double taxation was mentioned in article one in connection with instructions for future rules and in article 9(3) that established derogations for the Kingdom of Denmark.

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<sup>473</sup> Compare Eighth Directive art 2 and C-433/08 *Yaesu Europe*, para 21.

<sup>474</sup> Compare Eighth Directive art 3 and C-433/08 *Yaesu Europe*, para 22.

<sup>475</sup> C-433/08 *Yaesu Europe*, para 21.

<sup>476</sup> C-433/08 *Yaesu Europe*, para 22.

<sup>477</sup> C-582/08 *Commission v. United Kingdom*, para 32.

<sup>478</sup> Compare Eighth Directive art 2 and C-582/08 *Commission v. United Kingdom*, para 32.

<sup>479</sup> C-582/08 *Commission v. United Kingdom*, para 32.

<sup>480</sup> Council Directive 83/182/EEC.

<sup>481</sup> C-297/89 *Rigsadvokaten v Nicolai Christian Ryborg*, para 12-13.

<sup>482</sup> Council Directive 83/182/EEC.



Otherwise the purpose of avoiding double taxation was not mentioned in the directive and thus was it also a further purpose.

12 In order to answer that question, it must first be observed that Directive 83/182 contains, with respect to the temporary importation of certain means of transport and in relation to VAT, Community tax rules of the kind provided for in Article 14(2) of the Sixth Directive, 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 (Official Journal L 145, p. 1, hereinafter referred to as "the Sixth Directive").<sup>483</sup>

13 Accordingly, Directive 83/182 must be interpreted in the light of the fundamental aims of the VAT harmonizing measures, in particular the promotion of freedom of movement for persons and goods and the prevention of double taxation (judgments in Case 249/84 Profant [1985] ECR 3237, paragraph 25, and Case 127/86 Ledoux [1988] ECR 3741).<sup>484</sup>

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<sup>483</sup> C-297/89 Rigsadvokaten v Nicolai Christian Ryborg, para 12.

<sup>484</sup> C-297/89 Rigsadvokaten v Nicolai Christian Ryborg, para 13.

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First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes

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