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Judgment of the Court of 21 March 2000. - Gabalfrisa SL and Others v Agencia Estatal de Administración Tributaria (AEAT). - Reference for a preliminary ruling: Tribunal Económico-Administrativo Regional de Cataluña - Spain. - Meaning of national court or tribunal for the purposes of Article 177 of the EC Treaty (now Article 234 EC) - Admissibility - Value added tax - Interpretation of Article 17 of Sixth Directive 77/388/EEC - Deduction of tax paid on inputs - Activities prior to carrying out economic transactions on a regular basis. - Joined cases C-110/98 to C-147/98.

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Keywords

1. Preliminary rulings - Reference to the Court - National court or tribunal within the meaning of Article 177 of the Treaty (now Article 234 EC) - Definition - Tribunales Económico-Administrativos with jurisdiction to hear fiscal complaints - Inclusion

(EC Treaty, Art. 177 (now Art. 234 EC))

2. Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Deduction of input tax - Activities prior to carrying out taxable transactions on a regular basis - Requirements - Infringement - Penalty - Forfeiture of the right to deduct or deferment of the exercise of that right - Unlawful

(Directive 77/388, Art. 17)

Summary

1. In order to determine whether a body making a reference is a court or tribunal for the purposes of Article 177 of the Treaty (now Article 234 EC), it is important to take account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is inter partes, whether it applies rules of law and whether it is independent. The Tribunales Económico-Administrativos in Spain which have jurisdiction to hear fiscal complaints satisfy those criteria.

(see paras 33, 41)

2. Article 17 of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes precludes national legislation which makes the exercise of the right to deduct value added tax paid by a taxable person liable thereto before he starts regularly carrying out taxable transactions conditional upon the fulfilment of certain requirements such as the submission of an express request to that effect before the tax concerned becomes due and compliance with a time-limit of one year between that submission and the actual commencement of taxable transactions, and which penalises infringement of those requirements by forfeiture of the right to deduct or deferment of the exercise of that right until the time at which taxable transactions actually begin to be carried out on a regular basis.

(see para. 55 and operative part)

Parties

In Joined Cases C-110/98 to C-147/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal Económico-Administrativo Regional de Cataluña, Spain, for a preliminary ruling in the proceedings pending before that court between

Gabalfrisa SL and Others

and

Agencia Estatal de Administración Tributaria (AEAT)

on the interpretation of Article 17 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),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida (Rapporteur), L. Sevón and R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn, C. Gulmann, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet, Judges,

Advocate General: A. Saggio,

Registrar: R. Grass,

after considering the written observations submitted on behalf of:

- Tarragona 161 SA (C-112/98 and C-136/98), by F. Alonso Fernández, E. Andres and A. Azpeitia Gamazo, of the Madrid Bar,

- Gran Vía Zaragoza SA (C-116/98 and C-118/98 to C-120/98), by M. Laborda Aured, authorised agent,

- Savigi 89 SA (C-123/98), by G. Galiano Quesada, of the Barcelona Bar,

- Plácida Jiménez SL (C-125/98), by J. Jiménez Cano, authorised agent,

- Jesús Corral García, (C-132/98), in person,

- Gesba SA (C-137/98), by M. Casasus Camps, authorised agent,

- Estació de Servei El Trevol SL (C-138/98), by J. Gibert Canet, of the Barcelona Bar,

- Bungy Fun Germany GBDR (C-147/98), by F. Marcos, of the Tarragona Bar,

- the Spanish Government, by M. López-Monís Gallego, Abogado del Estado, acting as Agent,

- the Greek Government, by M. Apessos, Assistant Legal Representative of the State Legal Service, and A. Rokofyllou, Legal Assistant in the European Law Department of the Special Legal Service of the Ministry of Foreign Affairs, acting as Agents,

- the Commission of the European Communities, by M. Díaz-Llanos La Roche, Legal Adviser, and C. Gómez de la Cruz, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 7 October 1999,

gives the following

Judgment

Grounds

1 By orders of 19 December 1997 (C-110/98 to C-115/98, C-117/98, C-120/98 and C-125/98 to C-146/98), of 30 January 1998 (C-121/98 to C-124/98 and C-147/98) and of 25 February 1998 (C-116/98, C-118/98 and C-119/98), all received at the Court on 14 April 1998, the Tribunal Económico-Administrativo Regional de Cataluña (Regional Economic and Administrative Court, Catalonia) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Article 17 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; the Sixth Directive).

2 That question was raised in proceedings between several entrepreneurs or professional practitioners and various departments of the Agencia Estatal de Administración Tributaria (State Tax Administration Agency; the AEAT) concerning the deduction of value added tax (VAT) paid in respect of transactions carried out prior to the commencement of their activity.

The Sixth Directive

3 Article 4(1) and (2) of the Sixth Directive, which defines the concept of taxable persons, provides:

1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

4 Article 17 of the Sixth Directive, which governs the right to deduct, states:

1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

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

...

5 Article 22 of the Sixth Directive, which governs the obligations of persons liable for payment under the internal system, provides:

1. Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

...

8. Without prejudice to the provisions to be adopted pursuant to Article 17(4), Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud.

...

The national legislation on VAT

6 Article 100 of Law No 37/1992 of 28 December 1992 approving VAT (BOE No 312 of 29 December 1992; corrigendum, BOE No 33 of 8 February 1993) provides that the right to deduct is to lapse upon the expiry of five years reckoned from the time when that right arises.

7 Article 111 of Law No 37/1992, as amended by Article 10(7) of Law No 13/1996 of 30 December 1996 laying down Fiscal, Administrative and Social Measures (BOE No 315 of 31 December 1996; Law No 37/1992), states:

1. Entrepreneurs or professional practitioners may deduct VAT paid before the commencement of their business or professional activities as from the time at which those activities, or where appropriate those of the separately identifiable sector, actually commence, provided that the right to deduct that tax has not lapsed through expiry of the period laid down in Article 100 of this Law.

...

5. By way of exception to the provisions of Article 111(1), entrepreneurs or professional practitioners seeking to deduct tax levied on them before the commencement of their activities in accordance with Article 93(3) of this Law must meet the following requirements:

1. They must have submitted, before the tax was levied on them, a declaration preceding the commencement of business or professional activities or those of a separately identifiable sector in the manner to be laid down by regulation ... .

2. They must commence business or professional activities within one year following their submission of the declaration referred to in paragraph 1 above. However, the Administration may, in such manner as may be laid down by regulation, extend the said period of one year where the nature of the activities to be carried on in the future or the circumstances surrounding the start-up thereof so justify.

Where the abovementioned requirements are not fulfilled, deduction of the tax paid may not be made until the actual commencement of activities, and the taxable person shall be required to effect a rectification regarding any deductions that he may have made.

The provisions of this paragraph (paragraph 5) shall not apply to tax levied in respect of the acquisition of land, which may be deducted only as from the time at which the business or professional activities, or where appropriate those of the separately identifiable sector, actually commence. In that case, the right to deduct shall be deemed to arise at the date marking the commencement of the activities in question.

8 The Second Transitional Provision of Law No 13/1996 adds:

The procedure for deduction of tax levied prior to the commencement of business or professional activities, predating the entry into force of this Law, shall be governed in accordance with the provisions of this Law.

The present transitional provision shall apply solely to tax levied in the five years preceding the entry into force of this Law.

9 Article 28 of Royal Decree No 1624/1992 of 29 December 1992 approving the VAT Regulations (BOE No 314 of 31 December 1992) provides:

1. Taxable persons may submit applications and exercise the option indicated below:

...

4. request extension of the period specified in Article 111(1) of the Law for the commencement of business or professional activities.

2. ...

submission of the application must take place within the following periods:

...

4. in the case covered by subparagraph 4 of the foregoing paragraph, two months before the expiry of the prescribed period of one year.

The facts of the main proceedings and the question referred

10 Various departments of the AEAT refused the applicants in the main proceedings a deduction of VAT paid in respect of transactions carried out prior to the commencement of their activity, often

building works, by reason of infringement of the requirements laid down in Article 111 of Law No 37/1992 or Article 28 of Royal Decree No 1624/1992.

11 The applicants in the main proceedings took the view that the requirements laid down in Article 111 of Law No 37/1992 were contrary to Article 17(1) and (2)(a) of the Sixth Directive and commenced proceedings to challenge the decisions of the various departments of the AEAT before the Tribunal Económico-Administrativo Regional de Cataluña.

12 The orders for reference state that, according to an order of the Tribunal Económico-Administrativo Central (Central Economic-Administrative Court) of 29 March 1990, Tribunales Económico-Administrativos are courts or tribunals for the purposes of Article 177 of the Treaty, since they satisfy the five conditions laid down in the case-law of the Court of Justice relating to the concept of court or tribunal within the meaning of that provision, namely statutory origin, permanence, compulsory jurisdiction, inter partes procedure and the application of rules of law.

13 Since the Tribunal Económico-Administrativo Regional de Cataluña was unsure as to the compatibility of Law No 37/1992 with Article 17 of the Sixth Directive, it decided to stay proceedings and, in each of the cases, to refer the following question to the Court of Justice for a preliminary ruling:

With respect to the VAT paid by a taxable person liable thereto before he starts regularly carrying out taxable transactions, may the terms in which the right to deduct VAT is defined in Article 17 of the Sixth Council Directive 77/388/EEC of 17 May 1977 be interpreted as meaning that the exercise of that right may be made conditional, with a view to avoiding fraud, upon the fulfilment of certain requirements such as the submission of an express request before the tax concerned becomes due and commencement of taxable transactions on a regular basis within a specified time-limit reckoned from the date of that request, the penalty for infringement of those requirements being forfeiture of the right to deduct or, at least, deferment of its availability until the time at which taxable transactions begin to be carried out on a regular basis?

14 By order of 8 May 1998, the President of the Court of Justice decided to join Cases C-110/98 to C-147/98 for the purposes of the written and oral procedure and the judgment.

Admissibility

15 It is necessary first to verify that the Tribunal Económico-Administrativo Regional de Cataluña is a court or tribunal within the meaning of Article 177 of the Treaty.

National legislation relating to Tribunales Económico-Administrativos

16 Article 90 of General Tax Law No 230/1963 of 28 December 1963 (BOE of 30 December 1963) provides that management, clearance and recovery of taxes, on the one hand, and dealing with complaints, on the other, are entrusted to different bodies.

17 Article 163 of Law No 230/1963 states that fiscal complaints are dealt with by the Tribunales Económico-Administrativos.

18 Article 1 of Royal Decree No 391/1996 of 1 March 1996 approving the rules of procedure for economic-administrative complaints (BOE No 72 of 23 March 1996; corrigendum, BOE No 168 of 12 July 1996) provides that fiscal complaints are investigated and decided in accordance with legislative provisions and that decree.

19 Article 3 of that decree states:

Jurisdiction to hear and decide economic-administrative complaints shall be conferred on:

1. The Ministry of Economic Affairs and Finance.

2. The Tribunal Económico-Administrativo Central.

3. The Tribunales Económico-Administrativos Regionales.

4. The Tribunales Económico-Administrativos Locales de Ceuta et Melilla.

20 Article 40 of Legislative Decree No 2795/1980 of 12 December 1980 implementing Law No 39/1980 establishing the basic economic-administrative procedure (BOE of 30 December 1980) and Articles 4(2) and 119(3) and (4) of Royal Decree No 391/1996 state that decisions of the Tribunales Económico-Administrativos are subject to appeal before the administrative courts.

21 Article 4(1)(3) of Legislative Decree No 2795/1980 and Article 8(1) of Royal Decree No 391/1996 provide that the Minister for Economic Affairs and Finance is to rule, in particular, on fiscal complaints which the Tribunal Económico-Administrativo Central has judged should be decided by that minister by reason of their nature, the amount involved or their importance.

22 Article 5(c) of Legislative Decree No 2795/1980 and Article 9(1)(b) of Royal Decree No 391/1996 provide that the Tribunal Económico-Administrativo Central is to rule, in particular, on appeals brought against the decisions of the Tribunales Económico-Administrativos Regionales.

23 Article 16(1), (5) and (7) of Royal Decree No 391/1996 states that the Tribunales Económico-Administrativos Regionales are made up of a president, at least three members and a registrar, each having a vote. The president, the presidents of chambers and the members are nominated from among the officials in the administrative authorities mentioned in the description of the post and are removed from office by decision of the Minister for Economic Affairs and Finance. The registrar is an Abogado del Estado.

24 Article 169 of Law No 230/1963, Article 17(1) of Legislative Decree No 2795/1980 and Article 40(1) of Royal Decree No 391/1996 state that where fiscal complaint proceedings are brought, the authority with jurisdiction has the power to reexamine all matters resulting from the clearance or from the complaint, whether or not they were raised by the parties concerned.

25 Article 40(2) of Royal Decree No 391/1996 adds that the authority with jurisdiction may, consequently: (a) uphold the contested act; (b) annul it, in whole or in part; (c) state the relevant rights and obligations or order the management bodies to take the action which is dictated by the decision adopted in response to the complaint.

26 Article 17(2) of Legislative Decree No 2795/1980 and Article 40(3) of Royal Decree No 391/1996 state that, if the authority with jurisdiction intends to adjudicate on matters which were not raised by the parties concerned, it is to inform those who are represented and grant them a period of 15 days to submit their observations.

27 Article 35(1) of Legislative Decree No 2795/1980 provides that the Tribunales Económico-Administrativos are to rule on complaints which are submitted to them. Article 23(1) of Legislative Decree No 2795/1980 and Article 104 of Royal Decree No 391/1996 state that if, within one year of the fiscal complaint being brought before any of the authorities, proceedings have not been concluded, the complaint is presumed to have been rejected, so that the party concerned may bring an appeal against that rejection before the court with jurisdiction.

28 Article 55 of Royal Decree No 391/1996 states that final decisions of the Tribunales Económico-Administrativos may not be overturned or modified by the Administration, except in cases of

automatic nullity or special proceedings for revision.

29 Articles 30 and 32 of Legislative Decree No 2795/1980 and Articles 90 and 97 of Royal Decree No 391/1996 allow the persons concerned to lodge submissions and evidence in support of their claims and to request a public hearing.

30 Articles 20 and 35(2) of Legislative Decree No 2795/1980 state that the Tribunales Económico-Administrativos are to give reasons in fact and in law for their decisions.

31 Article 110(2) of Royal Decree No 391/1996 provides that if, as a result of a decision taken by a Tribunal Económico-Administrativo Regional, the Administration is required to effect a rectification of the act which was the subject of the complaint, it must do so within 15 days. Article 110(4) of Royal Decree No 391/1996 adds that if, as a result of a decision taken by a Tribunal Económico-Administrativo Regional, the Administration is required to reimburse sums paid in error, the person concerned is to be entitled to statutory interest reckoned from the date on which he made the overpayment.

32 Article 112 of Royal Decree No 391/1996 states that the registrars of the Tribunales Económico-Administrativos Regionales are to ensure the enforcement of decisions taken by those courts and adopt, or where appropriate propose that the president should adopt, measures appropriate to overcome obstacles to their enforcement.

Findings of the Court

33 In order to determine whether a body making a reference is a court or tribunal for the purposes of Article 177 of the Treaty, which is a question governed by Community law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is inter partes, whether it applies rules of law and whether it is independent (see, in particular, Case C-54/96 Dorsch Consult v Bundesbaugesellschaft Berlin [1997] ECR I-4961, paragraph 23, and the case-law cited therein).

34 The task of the Tribunales Económico-Administrativos was defined by Law No 230/1963 and Legislative Decree No 2795/1980. The procedure for fiscal complaints was organised by Royal Decree No 391/1996. Law No 230/1963, Legislative Decree No 2795/1980 and Royal Decree No 391/1996 thus show that the Tribunales Económico-Administrativos are of statutory origin and are permanent.

35 In accordance with Article 35(1) of Legislative Decree No 2795/1980, the Tribunales Económico-Administrativos are to rule on complaints which are submitted to them. It is clear, moreover, from Article 163 of Law No 230/1963, Article 40 of Legislative Decree No 2795/1980, and Articles 4(2) and 119(3) and (4) of Royal Decree No 391/1996 that decisions of the tax authority can be challenged before the administrative courts only after complaint proceedings have been brought before the Tribunales Económico-Administrativos. The jurisdiction of those Tribunales is thus compulsory.

36 Furthermore, it is clear from Articles 55 and 110 of Royal Decree No 391/1996 that, except in cases of automatic nullity or special proceedings for revision, final decisions of the Tribunales Económico-Administrativos may be neither overturned nor modified by the tax authority, which must enforce them and, where appropriate, effect a rectification of the contested act or reimburse sums paid in error. In accordance with Article 112 of that decree, the registrars of the Tribunales Económico-Administrativos ensure the enforcement of decisions taken by those courts and adopt measures appropriate to overcome obstacles to their enforcement. Final decisions of the Tribunales Económico-Administrativos are thus binding.

37 As to the inter partes nature of the procedure for dealing with fiscal complaints, it must be remembered that the requirement that the procedure be inter partes is not an absolute criterion (Dorsch Consult, paragraph 31). In this case, the parties concerned may, under Articles 30 and 32 of Legislative Decree No 2795/1980 and Articles 90 and 97 of Royal Decree No 391/1996, lodge submissions and evidence in support of their claims and request a public hearing. Moreover, Article 17(2) of Legislative Decree No 2795/1980 and Article 40(3) of Royal Decree No 391/1996 state that a Tribunal Económico-Administrativo which intends to adjudicate on matters which were not raised by the parties concerned is to inform those who are represented and grant them a period of 15 days to submit their observations. In those circumstances, it must be concluded that the procedure for dealing with fiscal complaints meets the requirement that the procedure be inter partes.

38 Furthermore, it is clear from Articles 20 and 35(2) of Legislative Decree No 2795/1980 that the Tribunales Económico-Administrativos are to give reasons in fact and in law for their decisions. Article 1 of Royal Decree No 391/1996 states that the Tribunales Económico-Administrativos are to rule on fiscal complaints in accordance with legislative provisions and that decree. Article 40(2) of that decree provides that the Tribunales Económico-Administrativos are to uphold the contested act, annul it, in whole or in part, or, finally, state the relevant rights and obligations or order the management bodies to take certain action. It is clear from those provisions that the Tribunales Económico-Administrativos apply rules of law.

39 Finally, it is important to note that Article 90 of Law No 230/1963 ensures a separation of functions between, on the one hand, the departments of the tax authority responsible for management, clearance and recovery and, on the other hand, the Tribunales Económico-Administrativos which rule on complaints lodged against the decisions of those departments without receiving any instruction from the tax authority.

40 Such safeguards give the Tribunales Económico-Administrativos, unlike the Directeur des Contributions Directes et des Accises (head of the Direct Taxes and Excise Duties Directorate) in question in Case C-24/92 Corbiau v Administration des Contributions [1993] ECR I-1277, paragraphs 15 and 16, the character of a third party in relation to the departments which adopted the decision forming the subject-matter of the complaint and the independence necessary for them to be regarded as courts or tribunals for the purposes of Article 177 of the Treaty.

41 Accordingly, the Tribunal Económico-Administrativo Regional de Cataluña must be regarded as a court or tribunal within the meaning of Article 177 of the Treaty, with the result that the reference for a preliminary ruling is admissible.

The question referred

42 By its question, the national court asks, in substance, whether Article 17 of the Sixth Directive precludes national legislation which makes the exercise of the right to deduct VAT paid by a taxable person liable thereto before he starts regularly carrying out taxable transactions conditional upon the fulfilment of certain requirements such as the submission of an express request to that effect before the tax concerned becomes due and compliance with a time-limit of one year between that submission and the actual commencement of taxable transactions, and which penalises infringement of those requirements by forfeiture of the right to deduct or deferment of the exercise of that right until the time at which taxable transactions actually begin to be carried out on a regular basis.

43 It should be noted, first, that the Court has consistently held that the right to deduct provided for in Article 17 et seq. of the Sixth Directive is an integral part of the VAT scheme and in principle may not be limited. The right to deduct must be exercised immediately in respect of all the taxes charged on transactions relating to inputs (see, in particular, Case C-62/93 BP Supergas v Greek

State [1995] ECR I-1883, paragraph 18).

44 Next, it must be recalled that 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 that all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT, are taxed in a wholly neutral way (see, in particular, Case 268/83 Rompelman v Minister van Financiën [1985] ECR 655, paragraph 19, and Case C-37/95 Ghent Coal Terminal [1998] ECR I-1, paragraph 15).

45 As the Court held in Rompelman, paragraph 23, and in Case C-110/94 INZO v Belgian State [1996] ECR I-857, paragraph 16, the principle that VAT should be neutral as regards the tax burden on a business requires that the first investment expenditure incurred for the purposes of and with the view to commencing a business must be regarded as an economic activity and it would be contrary to that principle if such an activity did not commence until the business was actually exploited, that is to say until it began to yield taxable income. Any other interpretation of Article 4 of the directive would burden the trader with the cost of VAT in the course of his economic activity without allowing him to deduct it in accordance with Article 17, and would create an arbitrary distinction between investment expenditure incurred before actual exploitation of a business and expenditure incurred during exploitation.

46 Article 4 of the Sixth Directive does not, however, preclude the tax authority from requiring objective evidence in support of the declared intention to commence economic activities which will give rise to taxable transactions. In that context, it is important to state that a taxable person acquires that status definitively only if he made the declaration of intention to begin the envisaged economic activities in good faith. In cases of fraud or abuse, in which, for example, the person concerned, on the pretext of intending to pursue a particular economic activity, in fact sought to acquire as his private assets goods in respect of which a deduction could be made, the tax authority may claim repayment of the sums retroactively on the ground that those deductions were made on the basis of false declarations (Rompelman, paragraph 24, and INZO, paragraphs 23 and 24).

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

48 The Spanish Government submits, however, that the combined provisions of Article 22(1) and (8) of the Sixth Directive allow the exercise of the right to deduct to be made conditional upon the fulfilment of certain requirements such as the submission of an express request or compliance with a time-limit of one year between such a request and the actual commencement of taxable transactions.

49 On the one hand, according to the Spanish Government, such a declaration serves the same purpose of control as the statement as to when activity commences, changes or ceases, provided for in Article 22(1) of the Sixth Directive.

50 On the other hand, according to both the Spanish and Greek Governments, the possibility for Member States to impose, under Article 22(8) of the Sixth Directive, obligations other than those provided for in that directive in order to ensure correct levying and collection of the tax and for the prevention of fraud includes the possibility of making the exercise of the right to deduct conditional upon the submission of an express request and compliance with a time-limit of one year between such a request and the actual commencement of taxable transactions.

51 In that regard, it is important to note that, as the Commission rightly pointed out, Article 22(1) of the Sixth Directive imposes only the obligation for taxable persons to state when their activity commences, changes or ceases, but in no way authorises Member States, in the event of such a declaration not being submitted, to defer the exercise of the right to deduct until the time at which taxable transactions actually begin to be carried out on a regular basis or to deprive the taxable person of the exercise of that right.

52 Furthermore, it must be noted that the measures which the Member States may adopt under Article 22(8) of the Sixth Directive in order to ensure the correct levying and collection of the tax and for the prevention of fraud must not go further than is necessary to attain such objectives. They may not therefore be used in such a way that they would have the effect of systematically undermining the right to deduct VAT, which is a fundamental principle of the common system of VAT established by the relevant Community legislation (see, to that effect, Joined Cases C-286/94, C-340/95, C-401/95 and C-47/96 Molenheide and Others v Belgian State [1997] ECR I-7281, paragraph 47).

53 The fact remains that the national legislation at issue in the main proceedings not only makes the exercise of the right to deduct VAT paid by a taxable person liable thereto before he starts regularly carrying out taxable transactions conditional upon the submission of an express request and compliance with a time-limit of one year between such a request and the actual commencement of taxable transactions, but also penalises infringement of those requirements by systematic deferment of the exercise of the right to deduct until the time at which taxable transactions actually begin to be carried out on a regular basis. Such legislation may even lead to the forfeiture of that right if those transactions do not commence or if the right to deduct is not exercised within five years from the time at which that right arises.

54 In those circumstances, such legislation goes beyond what is necessary to attain the objectives of ensuring the correct levying and collection of the tax and preventing fraud.

55 The answer to the question from the national court must therefore be that Article 17 of the Sixth Directive precludes national legislation which makes the exercise of the right to deduct VAT paid by a taxable person liable thereto before he starts regularly carrying out taxable transactions conditional upon the fulfilment of certain requirements such as the submission of an express request to that effect before the tax concerned becomes due and compliance with a time-limit of one year between that submission and the actual commencement of taxable transactions, and which penalises infringement of those requirements by forfeiture of the right to deduct or deferment of the exercise of that right until the time at which taxable transactions actually begin to be carried out on a regular basis.

Decision on costs

Costs

56 The costs incurred by the Spanish and Greek Governments and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the

parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

Operative part

On those grounds,

THE COURT,

in answer to the question referred to it by the Tribunal Económico-Administrativo Regional de Cataluña by orders of 19 December 1997 (C-110/98 to C-115/98, C-117/98, C-120/98 and C-125/98 to C-146/98), of 30 January 1998 (C-121/98 to C-124/98 and C-147/98) and of 25 February 1998 (C-116/98, C-118/98 and C-119/98), hereby rules:

Article 17 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 precludes national legislation which makes the exercise of the right to deduct value added tax paid by a taxable person liable thereto before he starts regularly carrying out taxable transactions conditional upon the fulfilment of certain requirements such as the submission of an express request to that effect before the tax concerned becomes due and compliance with a time-limit of one year between that submission and the actual commencement of taxable transactions, and which penalises infringement of those requirements by forfeiture of the right to deduct or deferment of the exercise of that right until the time at which taxable transactions actually begin to be carried out on a regular basis.