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Order of the Court (First Chamber) of 12 July 2001. - Welthgrove BV v Staatssecretaris van Financiën. - Reference for a preliminary ruling: Hoge Raad der Nederlanden - Netherlands. - Article 104(3) of the Rules of Procedure - Article 4 of the Sixth VAT Directive - Economic activity - Involvement of a holding company in the management of its subsidiaries. - Case C-102/00.

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Keywords

1. Preliminary rulings - Question the answer to which may be clearly deduced from the case-law - Application of Article 104(3) of the Rules of Procedure

(Rules of Procedure of the Court of Justice, Art. 104(3))

2. Tax provisions - Harmonisation of laws - Turnover taxes - Common system of value added tax - Economic activity within the meaning of Article 4(2) of the Sixth Directive - Involvement of a holding company in the management of its subsidiaries - Included only in so far as it entails carrying out transactions which are subject to VAT by virtue of Article 2 of that directive

(Council Directive 77/388, Arts 2 and 4(2))

Parties

In Case C-102/00,

REFERENCE to the Court under Article 234 EC by the Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the proceedings pending before that court between

Welthgrove BV

and

Staatssecretaris van Financiën

on the interpretation of Article 4, Article 11A(1)(a) and Article 13B(d)(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1),

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, P. Jann and L. Sevón (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,

Registrar: R. Grass,

after the court referring the question had been informed that the Court proposed to give its decision by reasoned order in accordance with Article 104(3) of its Rules of Procedure,

after the interested parties referred to in Article 20 of the EC Statute of the Court of Justice had been invited to submit any observations they may have in that connection,

after hearing the Advocate General,

makes the following

Order

Grounds

1 By judgment of 28 April 1999, received at the Court on 20 March 2000, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Article 4, Article 11A(1)(a) and Article 13B(d)(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, the Sixth Directive).

2 Those questions were raised in proceedings between Welthgrove BV (Welthgrove) and Staatssecretaris van Financiën concerning the right of a holding company to deduct value added tax (VAT) paid on input transactions.

Community legislation

3 Article 2(1) of the Sixth Directive provides that the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such is subject to VAT and, consequently, activities which are not economic activities fall outside the scope of the tax. Under Article 4(1) of the directive any person who independently carries out any economic activity specified in paragraph 2 is a taxable person. Economic activities is defined in Article 4(2) as comprising all activities of producers, traders and persons supplying services and, inter alia, the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis.

The main proceedings and the questions referred for a preliminary ruling

4 The judgment making the reference explains that Welthgrove is an intermediate holding company which holds shares in a number of companies established in the European Union manufacturing plastic packaging.

5 During the relevant period Welthgrove employed no staff. The members of its board of directors engaged in the active guidance of its subsidiaries, but Welthgrove charged no remuneration for those activities, although it received dividends from its subsidiaries.

6 In respect of that period, Welthgrove deducted an amount of NLG 8 114 by way of VAT. The Netherlands tax authority, taking the view that Welthgrove was not involved in an economic activity and was therefore not entitled to deduct VAT, decided to recover that amount a posteriori. It confirmed its decision following an objection by Welthgrove.

7 The appeal lodged by Welthgrove before the Gerechtshof te 's-Gravenhage (Regional Court of Appeal, The Hague) (Netherlands) was dismissed. The Gerechtshof found first of all that Welthgrove was involved in the management of the companies in which it held shares within the terms of the judgment in Case C-60/90 Polysar Investments Netherlands [1991] ECR I-3111. It further held that the dividends received by Welthgrove were to be regarded as remuneration for that involvement. Lastly it held that pursuant to the provision of Netherlands law implementing Article 13B(d)(5) of the Sixth Directive, those activities were exempt from VAT.

8 Welthgrove appealed to the Hoge Raad der Nederlanden, which decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

1. In light of the judgment in Polysar, particularly paragraphs 13 and 14, where a parent company involves itself in the management of a subsidiary, is the receipt of dividends from that subsidiary to be deemed to constitute consideration for such involvement within the meaning of Article 11A(1)(a) of the Sixth Directive?

2. If the answer to the first question is in the negative, does the mere fact that the appellant involves itself in the management of its subsidiary companies, in the manner described in paragraph 14 of the Polysar judgment, mean that the appellant is to be deemed a taxable person within the meaning of Article 4 of the Sixth Directive?

3. If the answer to the first or second question is affirmative, does such involvement come within the exception in Article 13B(d)(5) of the Sixth Directive, that is to say the management mentioned therein?

9 By letter of 14 December 2000, the Registrar of the Court sent the national court a copy of the judgment in Case C-142/99 Floridienne and Berginvest [2000] ECR I-9567, requesting that court to inform it whether, in the light of that judgment, it wished to maintain the reference.

10 By letter of 10 January 2001, the Hoge Raad der Nederlanden informed the Court that it was withdrawing the first question but not the second and third. It stated that, unlike the holding companies whose circumstances are considered in Floridienne and Berginvest, Welthgrove is involved in the management of its subsidiaries but not carrying out transactions subject to VAT under Article 2 of the Sixth Directive.

Second question

11 In the second question, the national court is asking in essence whether the mere involvement of a holding company in the management of its subsidiary companies constitutes an economic activity within the meaning of Article 4(2) of the Sixth Directive.

12 The answer to that question is clear from the case-law, so that the Court may give a decision by reasoned order in accordance with Article 104(3) of its Rules of Procedure.

13 The Court has consistently held that Article 4 of the Sixth Directive must be interpreted as meaning that a holding company whose sole purpose is to acquire holdings in other undertakings, without involving itself directly or indirectly in the management of those undertakings, without prejudice to its rights as a shareholder, does not have the status of a taxable person for VAT purposes and has no right to deduct tax under Article 17 of the Sixth Directive (see in particular Polysar Investments Netherlands, paragraph 17, and Floridienne and Berginvest, paragraph 17).

14 It is clear from those judgments that that conclusion is based in particular on the finding that the mere acquisition and holding of shares in a company is not to be regarded as an economic activity within the meaning of the Sixth Directive, conferring on the holder the status of a taxable person. The mere acquisition of financial holdings in other undertakings does not amount to the exploitation of property for the purpose of obtaining income therefrom on a continuing basis because any dividend yielded by that holding is merely the result of ownership of the property (see Case C-333/91 Sofitam v Ministre chargé du Budget [1993] ECR I-3513, paragraph 12, and Case C-80/95 Harnas & Helm [1997] ECR I-745, paragraph 15).

15 The Court has held, however, that it is otherwise where the holding is accompanied by direct or indirect involvement in the management of the companies in which the holding has been acquired, without prejudice to the rights held by the holding company as shareholder (Polysar Investments Netherlands, paragraph 14, and Floridienne and Berginvest, paragraph 18).

16 The Court held in paragraph 19 of the judgment in Floridienne and Berginvest that involvement of that kind in the management of subsidiaries must be regarded as an economic activity within the meaning of Article 4(2) of the Sixth Directive, in so far as it entails carrying out transactions which are subject to VAT by virtue of Article 2 of that directive.

17 Thus, the mere involvement of a holding company in the management of its subsidiaries without carrying out transactions subject to VAT under Article 2 of the Sixth Directive cannot be regarded as an economic activity within the meaning of Article 4(2) of the Sixth Directive.

18 The answer to the second question should therefore be that involvement of a holding company in the management of its subsidiaries must be regarded as an economic activity within the meaning of Article 4(2) of the Sixth Directive only in so far as it entails carrying out transactions which are subject to VAT by virtue of Article 2 of that directive.

Third question

19 The third question was raised only in case the answer to the second question was affirmative. In view of the answer given to that question there is no need to reply to the third question.

Decision on costs

Costs

20 The costs incurred by the Netherlands and United Kingdom Governments and by the Commission of the European Communities, 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 proceedings pending before the national court, the decision on costs is a matter for that court.

Operative part

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Hoge Raad der Nederlanden by judgment of 28 April 1999, hereby orders:

Involvement of a holding company in the management of its subsidiaries must be regarded as an economic activity within the meaning of Article 4(2) 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, only in so far as it entails carrying out transactions which are subject to VAT by virtue of Article 2 of that directive.