

Case C-302/07

J D Wetherspoon plc

v

The Commissioners for Her Majesty's Revenue & Customs

(Reference for a preliminary ruling from the

VAT and Duties Tribunal, London)

(First and Sixth VAT Directives – Principles of fiscal neutrality and proportionality – Rules on rounding of amounts of VAT – Methods and levels of rounding)

Summary of the Judgment

1. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Sixth Directive – Provisions on rounding of the amount of the tax*

(Council Directives 67/227, Art. 2, and 77/388, Arts 11A(1)(a), 12(3)(a) and 22(3)(b))

2. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Sixth Directive – Provisions on rounding of the amount of the tax*

(Council Directives 67/227, Art. 2, and 77/388, Arts 11A(1)(a), 12(3)(a) and 22(3)(b))

3. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Sixth Directive – Rounding of the amount of the tax*

(Council Directive 77/388)

1. Community law, as it currently stands, contains no specific requirement concerning the method of rounding amounts of value added tax. In the absence of specific Community legislation, it is for Member States to decide on the rules and methods for rounding amounts of value added tax, although those States must, when so deciding, observe the principles underpinning the common system of that tax, particularly the principles of fiscal neutrality and proportionality. In particular, Community law, first, does not preclude the application of a national rule which requires an amount of value added tax to be rounded up whenever the fraction of the smallest unit of currency concerned is at or above 0.50, and, second, does not require that taxable persons be allowed to round down any amount of value added tax which includes a fraction of the smallest unit of national currency.

(see para. 38, operative part 1)

2. In a sale at a price inclusive of value added tax, in the absence of specific Community legislation, each Member State is obliged to determine, within the limits of Community law, in particular in compliance with the principles of fiscal neutrality and proportionality, the level at which the rounding of an amount of value added tax which includes a fraction of the smallest unit of national currency may or must occur.

(see para. 51, operative part 2)

3. In view of the fact that traders who calculate the price of their sales of goods and services inclusive of value added tax are in a different situation to those effecting that same type of transactions at prices exclusive of value added tax, the former cannot invoke the principle of fiscal neutrality in order to claim the right also to round down, at line level and basket level, the amounts of value added tax due. Where prices are fixed exclusive of value added tax, the rounding occurs before the customer pays the consideration for the supply, the amount of tax collected by the taxable person from his customer and the amount subsequently paid by the taxable person to the State being identical, irrespective of the method of rounding applied. By contrast, where value added tax is included in the price of goods or services, the systematic rounding down at a lower level than the periodic value added tax return would result in the taxable person collecting from his customer the amount of the value added tax actually due whilst systematically paying to the State a lower amount, retaining the difference for his own benefit, which would be contrary to the principle that value added tax is collected by taxable persons at each stage of the production or distribution process on behalf of the tax authorities, to which those taxable persons are required to pay it.

(see paras 60-61, 64, operative part 3)

JUDGMENT OF THE COURT (Fourth Chamber)

5 March 2009 (*)

(First and Sixth VAT Directives – Principles of fiscal neutrality and proportionality – Rules on rounding of amounts of VAT – Methods and levels of rounding)

In Case C-302/07,

REFERENCE for a preliminary ruling under Article 234 EC from the VAT and Duties Tribunal, London (United Kingdom), made by decision of 26 June 2007, received at the Court on 29 June 2007, in the proceedings

J D Wetherspoon plc

v

The Commissioners for Her Majesty's Revenue and Customs,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, T. von Danwitz (Rapporteur), R. Silva de Lapuerta, E. Juhász and G. Arestis, Judges,

Advocate General: E. Sharpston,

Registrar: R. ?ere?, Administrator,

having regard to the written procedure and further to the hearing on 9 October 2008,

after considering the observations submitted on behalf of:

- J D Wetherspoon plc, by M. Angiolini, Barrister, and A. Khan, Solicitor,
- the United Kingdom Government, by V. Jackson, acting as Agent, and R. Hill, Barrister,
- the Greek Government, by S. Alexandridou, V. Karra, K. Georgiadis and M. Apesos, acting as Agents,
- the Netherlands Government, by C. Wissels and M. de Grave, acting as Agents,
- the Commission of the European Communities, by M. Afonso and R. Lyal, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 November 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 2 of 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), as amended by 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 First Directive'), along with Articles 11A(1)(a), 12(3)(a) and 22(3)(b) of Sixth Council Directive 77/388/EEC, as amended by Council Directive 2003/92/EC of 7 October 2003 (OJ 2003 L 260, p. 8) ('the Sixth Directive').

2 The reference has been made in the context of proceedings between J D Wetherspoon plc ('Wetherspoon') and the Commissioners for Her Majesty's Revenue and Customs ('HMRC') concerning the refusal by the latter of an application to allow Wetherspoon to round down the amount due in respect of value added tax ('VAT') payable at line level and at basket level.

Legal framework

Community legislation

3 Article 2 of the First Directive states:

'The principle of the common system of value added tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged.

On each transaction, value added tax, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of value added tax borne directly by the various cost components.

The common system of value added tax shall be applied up to and including the retail trade stage.'

4 Article 10(2) of the Sixth Directive provides that the chargeable event occurs and the tax becomes chargeable, in principle, when the goods are delivered or the services are performed.

5 Article 11A(1)(a) of the Sixth Directive provides:

‘The taxable amount shall be:

(a) in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, 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 for such supplies including subsidies directly linked to the price of such supplies’.

6 According to Article 12(3)(a) of the Sixth Directive, the standard rate of VAT is to be fixed by each Member State as a percentage of the taxable amount and is to be the same for the supply of goods and for the supply of services. Except where one or two reduced rates apply, that percentage may not be less than 15%.

7 Article 22 of the Sixth Directive, in the version resulting from Article 28h thereof (‘Article 22 of the Sixth Directive’), lays down the obligations of persons liable for payment of VAT under the internal system. The first subparagraph of Article 22(3)(a) and the first subparagraph, the tenth indent of the first subparagraph and the fourth subparagraph of Article 22(3)(b) state:

‘(a) Every taxable person shall ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of goods or services which he has supplied or rendered to another taxable person or to a non-taxable legal person. ...

...

(b) Without prejudice to the specific arrangements laid down by this Directive, only the following details are required for VAT purposes on invoices issued under the first, second and third subparagraphs of point (a):

...

– the VAT amount payable, except where a specific arrangement is applied for which this Directive excludes such a detail,

...

The amounts which appear on the invoice may be expressed in any currency, provided that the amount of tax to be paid is expressed in the national currency of the Member State where the supply of goods or services takes place ...

...’

8 Article 22(4)(a) and (b) and 22(5) of the Sixth Directive provides:

‘4. (a) Every taxable person shall submit a return by a deadline to be determined by Member States. ...

(b) The return shall set out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, where appropriate, and in so far as it seems necessary for the establishment of the basis of assessment, the total value of the transactions relative to such tax and deductions and the value of any exempt transactions.

...

5. Every taxable person shall pay the net amount of the value added tax when submitting the regular return. Member States may, however, set a different date for the payment of that amount or may demand an interim payment.'

9 During the period 2004 to 2006, numerous amendments were made to the Sixth Directive. Of the provisions set out above, only the wording of Article 12(3) was amended. However, that amendment has no bearing on the answers to be given to the questions referred to the Court for a preliminary ruling.

National rules

10 Regulation 13 of the Value Added Tax Regulations 1995 lays down the obligation to provide a VAT invoice when a taxable supply is made to another taxable person.

11 According to regulation 16(1), a 'retailer' is not required to provide a VAT invoice unless the customer requests one. Where the consideration does not exceed GBP 100, it is possible to issue a 'simplified VAT invoice' indicating, inter alia, for each rate of VAT chargeable, the gross amount payable including VAT, and the rate of VAT applicable.

12 HMRC published a guide to VAT for taxable persons entitled *VAT Notice 700 – The VAT Guide – April 2002* ('VAT Notice 700').

13 Paragraphs 17.5, 17.5.1 and 17.6 of VAT Notice 700 concern rounding of amounts of VAT. They provide:

'17.5 Calculation of VAT on invoices – rounding of amounts

Note: The concession in this paragraph to round down amounts of VAT is designed for invoice traders and applies only where the VAT charged to customers and the VAT paid to Customs and Excise is the same. As a general rule, the concession to round down is not appropriate to retailers, who should see paragraph 17.6.

You may round down the total VAT payable on all goods and services shown on a VAT invoice to a whole penny. You can ignore any fraction of a penny.

17.5.1 Calculation based on lines of goods or services

If you wish to work out the VAT separately for a line of goods or services, which are included with other goods or services in the same invoice, you should calculate the separate amounts of VAT either by rounding:

- down to the nearest 0.1 p – for example, 86.76 p would be rounded down to 86.7 p; or
- to the nearest 1 p or 0.5 p – for example, 86.76 p would be rounded up to 87 p.

Whatever you decide, you must be consistent.

The final total amount of VAT payable may be rounded down to the nearest whole penny.

...

17.6 Calculation of VAT at retailers

Most retailers account for VAT using a retail scheme. If that is the way you account for VAT, this paragraph does not affect you.

Retailers are increasingly using sophisticated till technology to identify the VAT due on each transaction and issue an invoice. If you do not use a retail scheme, but instead calculate VAT at line level or invoice level, you must not round the VAT figure down. However, you may round (up and down) each VAT calculation.'

14 VAT Notice 700 does not define 'invoice traders'.

15 Further guidance on rounding is provided in HMRC *Manual V1?24A: Trader's records*, which is a publicly available guide for revenue staff.

16 Section 12.1 of that manual states that, when interpreting Paragraph 17.5 of VAT Notice 700, 'it is important to note that it is in the context of rules for invoice traders where the rounding is tax neutral. This is because it will normally impact on both the output tax of the supplier and the input tax of the customer. This means that when an invoice trader calculates the VAT on net values, the amount charged and payable by the customer may be rounded down.'

17 Section 12.2 of *Manual V1?24A: Trader's records* provides:

'Sophisticated accounting packages allow retailers the possibility of identifying VAT at line level and/or providing VAT invoices. ...

As a general rule the concession to round down is not appropriate for retailers. This is because the effect of rounding down the VAT charged to final consumers is not to reduce the VAT payable (which is the VAT fraction [multiplied by] the consideration) but only to reduce the tax accounted to HMRC.

Most retailers continue to account for VAT using a retail scheme. The problem of rounding only arises for retailers whose accounting systems allow them to identify tax at line level and to issue invoices. ...

If a retailer genuinely sets prices on a VAT-exclusive basis – so that the VAT charged to the customer and the VAT accounted to HMRC are the same – the existing rounding concession may be appropriate. In considering such a system, you should examine how prices are actually set. If the retailer genuinely arrives at a tax inclusive selling price by starting with a net value expressed in whole pennies, then the existing concession may be appropriate. ...'

18 Section 12.3 of *Manual V1?24A: Trader's records* explains the arithmetical method for rounding and states, in its third subparagraph, that 'if a trader proposes an alternative rounding method then it should be considered and allowed if it produces an acceptable and reasonable result'.

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

19 Wetherspoon operates a chain of more than 670 pubs throughout the United Kingdom. The

majority of its revenue is generated by retail sales of food and beverages to final consumers.

20 Wetherspoon displays retail selling prices inclusive of VAT to its customers. It does not issue them with full VAT invoices although, in respect of orders for food or hot beverages, it routinely provides them with till receipts indicating its VAT registration number. For other beverages, including alcoholic ones, it provides a till receipt only if the consumer requests one.

21 Until 2004, Wetherspoon calculated the VAT due on each transaction subject to the standard rate of VAT of 17.5% with an individual customer by multiplying the total amount of the sale by $7/47$. The result was rounded up or down arithmetically, to the nearest penny.

22 Since modernising its electronic point-of-sale till system in August 2004, Wetherspoon has been able to calculate the VAT at 'line' level, that is, on each separately identified product where the transaction involves more than one product. In order to do so, Wetherspoon calculates and rounds down the VAT to three decimal places, namely, down to the nearest tenth of a penny, at the product line level. It then aggregates those amounts of VAT and rounds down the total to the nearest whole penny, at the level of the transaction ('basket level').

23 Between September 2004 and January 2005, Wetherspoon negotiated with HMRC with a view to agreeing a bespoke scheme for retailers. However, the scheme proposed by Wetherspoon was never approved by HMRC and Wetherspoon never implemented it.

24 By letter of 23 March 2006, HMRC refused to allow Wetherspoon to round down the VAT payable on each transaction. Accordingly, on 7 April 2006, Wetherspoon lodged a notice of appeal against that refusal. On 7 September 2006, it lodged two other actions, on the same grounds, against two assessment notices issued on 8 and 17 August 2006.

25 Wetherspoon claims that it is entitled to apply the method of rounding down provided for in Paragraph 17.5.1 of VAT Notice 700. HMRC contend that Wetherspoon should, on the contrary, round arithmetically at either line level or basket level.

26 The national tribunal, before which those actions have been brought, states that neither Community law, on the one hand, nor the Value Added Tax Act 1994 or the Value Added Tax Regulations 1995, on the other, lay down clear rules concerning the method of rounding to be used where the application of the normal rate of VAT leads to an amount which includes a fraction of the smallest currency unit available, in this case one penny. According to that tribunal, two methods of rounding are possible. It is possible systematically to round down or to round arithmetically, by rounding down fractions of less than 0.5 penny to the nearest whole penny and by rounding up fractions equal to or greater than 0.5 to the nearest whole penny.

27 The national tribunal also points out that neither the directives nor the United Kingdom legislation specify at what stage or level rounding should take place. Accordingly, where a customer purchases several products at the same time, the VAT invoiced could be rounded for each item separately or, where multiple items of the same product are purchased, for each line of goods. Likewise, rounding could occur at the level of the total transaction with the customer, at the moment of the VAT declaration at the end of the relevant accounting period or, finally, at some other level, such as that of daily gross taking per outlet or for all of the trader's retail outlets.

28 Taking the view that it is not clear whether Community law requires any particular form of rounding and, if so, how the principle of fiscal neutrality is to be applied in that context, the national tribunal decided to stay the proceedings and to refer the following four questions to the Court for a preliminary ruling:

(1) Is the rounding off of VAT amounts governed solely by national law, or instead governed by Community law? In particular, do the first and second paragraphs of Article 2 of the First Directive and Articles 11A(l)(a) and/or 12(3)(a) and/or Article 22(3)(b) (version as at 1 January 2004) of the Sixth Directive confirm that rounding off is a matter of Community law?

(2) In particular:

(i) Does Community law prevent the application of a national rule or practice of the national taxing authority which requires rounding up of any given VAT amount whenever the fraction of the smallest unit of currency concerned is at or above 0.50 (for example, 0.5 pence is required to be rounded up to the nearest whole pence)?

(ii) Does Community law require that the taxpayers be allowed to round down any VAT amount which includes a fraction of the smallest unit of currency available?

(3) In a VAT inclusive sale, at which level does Community law require rounding off to be applied for the purpose of calculating the VAT due: at the level of each individual item, each line of goods, each supply (if more than one supply is included in the same basket), each transaction/basket total, or each VAT accounting period or some other level?

(4) Is the answer to any of the questions affected by the Community law principles of equal treatment and fiscal neutrality, particularly by reference to the existence, in the United Kingdom, of a concession by the relevant taxing authorities allowing only certain traders to round down the VAT amounts to be accounted for?

The questions referred for a preliminary ruling

The first and second questions

29 By its first two questions, which it is appropriate to examine together, the national tribunal asks, essentially, whether the rounding of amounts of VAT comes within the scope of national or Community law and, more specifically, whether Community law includes rules on the rounding method, whether precluding arithmetical rounding or requiring Member States to authorise taxable persons systematically to round down, when the application of the standard rate of VAT leads to an amount of VAT which includes a fraction of the smallest unit of national currency.

30 In that regard, the Court has already held that the provisions of the First and Sixth Directives contain no explicit rule concerning rounding of amounts of VAT. In particular, the Sixth Directive is silent on that matter (Case C-484/06 *Koninklijke Ahold* [2008] ECR I-0000, paragraph 24).

31 Moreover, it cannot be inferred either from the wording of Articles 11A(1)(a), 22(3)(b), 22(4) and 22(5) of the Sixth Directive or from their objectives that a specific method of rounding has been laid down by Community law (see, to that effect, *Koninklijke Ahold*, paragraphs 27 to 30).

32 Consequently, in the absence of any specific Community legislation, it is for the legal systems of the Member States to determine, within the limits of Community law, the method and rules for rounding of an amount declared by way of VAT (see *Koninklijke Ahold*, paragraph 31).

33 When Member States establish or accept a particular method of rounding, they are obliged to observe the principles governing the common system of VAT, such as those of fiscal neutrality and proportionality. It does not, however, follow from observance of those recognised principles of the Community legal system that the question as to which specific method of rounding should be used is itself within the scope of Community law (*Koninklijke Ahold*, paragraph 32).

34 One of the consequences of the principle of fiscal neutrality is that taxable persons effecting the same or similar economic transactions must not be treated differently with regard to the method of rounding applied when VAT is calculated (see, to that effect, *Koninklijke Ahold*, paragraph 36 and the case² law cited). By virtue of the same principle, the amount of VAT to be collected by the tax authority must not be greater than that declared on the invoice and paid by the final consumer to the taxable person (see Case C-317/94 *Elida Gibbs* [1996] ECR I-5339, paragraph 24, and, to that effect, *Koninklijke Ahold*, paragraph 36).

35 Accordingly, that principle does not entail any requirement that a particular method of rounding be applied, in so far as the method chosen by the Member State concerned ensures that the amount of VAT to be collected by the tax authority corresponds exactly to the amount of VAT paid by the final consumer to the taxable person (see *Koninklijke Ahold*, paragraph 37).

36 With regard to the principle of proportionality, the Court has held that, while observance of that principle requires that any rounded amount should correspond as closely as possible to that arising from application of the rate in force, the fact remains that that requirement must be reconciled with the practical needs of the effective application of the common system of VAT and that, in view of the technical nature of rounding, more than one single method of rounding could satisfy those requirements (see, to that effect, *Koninklijke Ahold*, paragraphs 39 to 41).

37 It follows from the foregoing that Community law, in particular the provisions of the First and Sixth Directives and the principles of fiscal neutrality and proportionality, contains no specific requirement concerning the method of rounding amounts of VAT (see, to that effect, *Koninklijke Ahold*, paragraph 42).

38 Accordingly, the answer to the first and second questions is that Community law, as it currently stands, contains no specific requirement concerning the method of rounding amounts of VAT. In the absence of specific Community legislation, it is for Member States to decide on the rules and methods for rounding amounts of VAT, although those States must, when so deciding, observe the principles underpinning the common system of that tax, particularly the principles of fiscal neutrality and proportionality. In particular, Community law, first, does not preclude the application of a national rule which requires an amount of VAT to be rounded up whenever the fraction of the smallest unit of currency concerned is at or above 0.50, and, second, does not require that taxable persons be allowed to round down any amount of VAT which includes a fraction of the smallest unit of national currency.

The third question

39 By this question, the national tribunal asks whether, in a sale at a price inclusive of VAT, Community law requires that rounding for the purpose of calculating the VAT due should occur at a particular level, for example at one of those referred to in paragraph 27 above.

40 In the view of the United Kingdom Government, Community law requires rounding of VAT only at the stage at which it requires VAT accounting as a sum of money. Accordingly, the lowest level would be either the invoice issued pursuant to Article 22(3) of the Sixth Directive, or the periodic VAT return. However, Member States retain a certain discretion to authorise rounding at

an earlier stage if they consider this to be appropriate.

41 The Commission of the European Communities is also of the view that it may be considered necessary to indicate the VAT due in round figures when an invoice is issued in accordance with Article 22(3) of the Sixth Directive. However, in the case of a retail sale at prices inclusive of VAT, it would only be at the stage of the periodic VAT return that the need would arise to express the amount due in round figures.

42 Wetherspoon, by contrast, takes the view that rounding practised only at the end of the relevant VAT accounting period would be incompatible with the rules of the First and Sixth Directives and with the principles of fiscal neutrality and legal certainty. As the obligation to declare VAT to the tax authorities for supplies effected arises in respect of each transaction, it would be necessary to identify the exact amount of VAT that the customer is required to pay and which the supplier is required to declare, at the latest, at basket level.

43 First, it must be stated that the provisions of the First and Sixth Directives, in particular those set out by the national tribunal, do not include any express rule fixing the level at which the rounding of amounts of VAT including a fraction of the smallest unit of national currency may or must be carried out.

44 In particular, Article 11A(1)(a) of the Sixth Directive restricts itself to determining the taxable amount and it refers only to the price of the goods supplied and the services performed as consideration for the price (*Koninklijke Ahold*, paragraph 26).

45 Article 22(3)(b) of the Sixth Directive, it is true, provides that, where an invoice is issued, the amount of tax to be paid must appear on the invoice and be expressed in the national currency of the Member State concerned. However, it does not follow from these requirements that that provision requires the use of whole units of national currency for that information.

46 That finding is in no way brought into question by the objectives and context of either of the provisions referred to in the two preceding paragraphs. The purpose of those provisions is to guarantee uniformity of the taxable amount in Member States and to ensure that the internal market functions properly (see *Koninklijke Ahold*, paragraphs 28 and 29).

47 It follows that the inference cannot be drawn from either the wording of those provisions or their objectives that a particular level of rounding has been laid down by Community legislation.

48 Accordingly, in the absence of any specific Community rules, it is for the legal systems of the Member States to determine, within the limits established by Community law, the stage at which the rounding of an amount of VAT may or must be carried out.

49 As is clear from paragraph 33 above, Member States, when they determine that stage, are obliged to observe the principles of fiscal neutrality and proportionality governing the common system of VAT (see, in that regard, paragraphs 34 to 36 above). However, because of the technical nature of rounding, those principles are not such as to contain requirements from which it can be inferred that only one level of rounding, namely that effected at item level or line level, is capable of satisfying the principles.

50 Furthermore, it is necessary to distinguish possible requirements of Community law on rounding from the practical need to round an amount of VAT which includes a fraction of the smallest unit of national currency. With regard to transactions at a price inclusive of VAT, the imperative need to round the amount of VAT to a whole unit of that currency unit does not exist at this stage, as the Advocate General has stated at point 42 of her Opinion. In such a case, it is only

at the end of the periodic VAT return that it is absolutely necessary to arrive at an amount which can actually be paid and which, consequently, may not include a fraction of the smallest unit of currency.

51 Having regard to all of the foregoing considerations, the answer to the third question is that, in a sale at a price inclusive of VAT, in the absence of specific Community legislation, each Member State is obliged to determine, within the limits of Community law, in particular in compliance with the principles of fiscal neutrality and proportionality, the level at which the rounding of an amount of VAT which includes a fraction of the smallest unit of national currency may or must occur.

The fourth question

52 By this question, the national tribunal asks, essentially, whether a 'retailer' may, in reliance on the Community principles of equal treatment and fiscal neutrality, claim the right to apply the same method of rounding amounts of VAT due as that which national law grants to certain taxable persons, namely 'invoice traders', in other words, to round down the amount due in respect of VAT at line level and basket level.

53 Wetherspoon is of the view that it is incompatible with the principle of fiscal neutrality to deny retailers the concession granted to invoice traders. Such exclusion, it argues, has the result that supplies of similar goods and services which are in competition with each other are treated differently for VAT purposes. In addition, in the absence of any definition of 'invoice traders' in the national rules mentioned above, the distinction in question is arbitrary.

54 The United Kingdom Government takes the view, in that regard, that invoice traders do not make similar supplies to those of retailers and are not in competition with them, since retailers operate at a different level of the supply chain. Consequently, the principles of fiscal neutrality and elimination of distortion in competition do not require that those two groups of persons be treated in the same way for VAT purposes.

55 According to the Commission, the principle of fiscal neutrality precludes the extension to retailers of a concession by a tax authority authorising certain operators, who normally apply prices exclusive of VAT and do not sell to end consumers, to round down the VAT amount to be declared.

56 The Greek Government takes the view that rounding down to the lower figure has no bearing on the final amount collected by the State only if it applies solely to supplies to other taxable persons.

57 In that regard, it must be pointed out, as is apparent from paragraph 34 above, that the principle of fiscal neutrality, which is the reflection in the field of VAT of the principle of equal treatment, precludes, inter alia, for taxable persons effecting the same transactions or similar economic transactions, different treatment with regard to the method of rounding applied when VAT is calculated (see to that effect, also, Case C-162/07 *Ampliscientifica and Amplifin* [2008] ECR I-0000, paragraph 25, and Case C-132/06 *Commission v Italy* [2008] ECR I-0000, paragraph 39).

58 Thus, it is necessary to examine whether the 'invoice traders' and 'retailers' referred to by the rules at issue in the main proceedings effect the same transactions or similar economic transactions.

59 In the present case, it follows from paragraph 17.5 of VAT Notice 700 and from sections

12.1 and 12.2 of the manual *V1?24A: Trader's records* that the term 'invoice traders' refers only to taxable persons who effect their supplies of goods and services at prices exclusive of VAT, to which VAT is added at the moment of invoicing.

60 Where prices are fixed exclusive of VAT, the rounding occurs before the customer pays the consideration for the supply. The amount of tax collected by the taxable person from his customer and the amount subsequently paid by the taxable person to the State are identical, irrespective of the method of rounding applied.

61 By contrast, where VAT is included in the price of goods or services, the systematic rounding down at a lower level than the periodic VAT return would result in the taxable person collecting from his customer the amount of the VAT actually due whilst systematically paying to the State a lower amount, retaining the difference for his own benefit. That result would be contrary to the principle that VAT is collected by taxable persons at each stage of the production or distribution process on behalf of the tax authorities, to which those taxable persons are required to pay it (see Case C?291/03 *MyTravel* [2005] ECR I?8477, paragraph 30).

62 Moreover, the two situations mentioned above differ significantly from the point of view of the practical need to apply the common system of VAT effectively. In respect of prices exclusive of VAT, normally expressed in round figures, the rounding of VAT is indispensable if a total amount resulting from the addition of the price exclusive of VAT and the VAT due is to be obtained, which is capable of being actually paid. However, where the VAT is included in the price of the goods or service, rounding is not necessary in order to be able to pay the total price.

63 Therefore, traders effecting their sales of goods or services at prices exclusive of VAT and those calculating the prices of those transactions by including the VAT are in different situations. Accordingly, the latter cannot, in reliance on the principle of fiscal neutrality, claim the right to be treated in the same way as operators applying prices exclusive of VAT with regard to the rounding of the amount due in respect of VAT.

64 Consequently, the answer to the fourth question is that, in view of the fact that traders who calculate the price of their sales of goods and services inclusive of VAT are in a different situation to those effecting that same type of transactions at prices exclusive of VAT, the former cannot invoke the principle of fiscal neutrality in order to claim the right also to round down, at line level and basket level, the amounts of VAT due.

Costs

65 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national tribunal, the decision on costs is a matter for that tribunal. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

- 1. Community law, as it currently stands, contains no specific requirement concerning the method of rounding amounts of value added tax. In the absence of specific Community legislation, it is for Member States to decide on the rules and methods for rounding amounts of value added tax, although those States must, when so deciding, observe the principles underpinning the common system of that tax, particularly the principles of fiscal neutrality and proportionality. In particular, Community law, first, does not preclude the application of a national rule which requires an amount of value added tax to be rounded up whenever the fraction of the smallest unit of currency concerned is at or above 0.50, and, second, does not require that taxable persons be allowed to round down any amount of value added tax which includes a fraction of the smallest unit of national currency.**
- 2. In a sale at a price inclusive of value added tax, in the absence of specific Community legislation, each Member State is obliged to determine, within the limits of Community law, in particular in compliance with the principles of fiscal neutrality and proportionality, the level at which the rounding of an amount of value added tax which includes a fraction of the smallest unit of national currency may or must occur.**
- 3. In view of the fact that traders who calculate the price of their sales of goods and services inclusive of value added tax are in a different situation to those effecting that same type of transactions at prices exclusive of value added tax, the former cannot invoke the principle of fiscal neutrality in order to claim the right also to round down, at line level and basket level, the amounts of value added tax due.**

[Signatures]

* Language of the case: English.