

JUDGMENT OF THE COURT (Fifth Chamber)

21 January 2016 (\*)

(Reference for a preliminary ruling — Taxation — Value Added Tax — Sixth VAT Directive — Exemptions — Article 13A(1)(g) — Exemption for the supply of services closely linked to welfare and social security work, provided by bodies governed by public law or by other organisations recognised as charitable — ‘Supply of services and of goods closely linked to welfare and social security work’ — Organisations recognised as charitable — Serviced residence)

In Case C-335/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d’appel de Mons (Mons Court of Appeal, Belgium), made by decision of 18 June 2014, received at the Court on 11 July 2014, in the proceedings

**Les Jardins de Jouvence SCRL**

v

**État belge,**

intervening party:

**AXA Belgium SA,**

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Fourth Chamber, acting for the President of the Fifth Chamber, D. Šváby, A. Rosas, E. Juhász and C. Vajda (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 3 June 2015,

after considering the observations submitted on behalf of:

- Les Jardins de Jouvence SCRL, by L. Strepenne and G. Lardinois, avocats,
- Axa Belgium SA, by P. Meessen and C. Goossens, avocats,
- the Belgian Government, by M. Jacobs and C. Pochet, and by J.-C. Halleux, acting as Agents,
- the European Commission, by F. Dintilhac and L. Lozano Palacios, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 July 2015,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 13A(1)(g) 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 The request has been made in proceedings between Les Jardins de Jouvence SCRL (‘LJJ’) and État belge (‘the Belgian State’) concerning the refusal to allow that company to deduct input value added tax (‘VAT’) in the context of building work which it carried out for the purpose of operating a serviced residence.

## Legal context

### *EU law*

3 The Sixth Directive was repealed and replaced, with effect from 1 January 2007, by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1). However, given the date at which the material facts arose, the dispute in the main proceedings is still governed by the Sixth Directive.

4 Article 13A of the Sixth Directive provided:

‘1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

...

(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people’s homes, by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned;

...

2. ...

(b) The supply of services or goods shall not be granted exemption as provided for in (1) (b), (g), (h), (i), (l), (m) and (n) above if:

– it is not essential to the transactions exempted,

...’

### *Belgian law*

5 Article 44(2) of the Value Added Tax Code (*Moniteur belge* of 27 July 1969, p. 7046), in the version in force up to 21 July 2005, provided:

‘The following shall also be exempt from VAT:

...

(2) the supply of services or goods closely linked to social welfare, carried out by bodies whose task or business is to care for elderly persons and which are recognised as such by the competent authority and which, in the case of bodies governed by private law, operate under social conditions comparable with those that apply to public law bodies ...'

6 The Programme Law of 11 July 2005 (*Moniteur belge* of 12 July 2005, p. 32180) amended the Value Added Tax Code as from 22 July 2005. Article 44(2) of that code, as amended ('the amended VAT Code'), provides:

'The following shall also be exempt from VAT:

...

(2) the supply of services or goods closely linked to welfare, to social security work and to the protection of children and young people by bodies governed by public law, or by other bodies recognised by the competent authority as being devoted to social wellbeing.

These include, in particular:

– bodies whose task or business is to take care of elderly people;

...'

7 As set out in Article 2(1) of the Decree of the Walloon Regional Council of 5 June 1997 relating to retirement homes, serviced residences and day care centres for the elderly, and creating the Walloon council for the third age (décret du Conseil régional wallon du 5 juin 1997 relatif aux maisons de repos, résidences-services et aux centres d'accueil de jour pour personnes âgées et portant création du Conseil wallon du troisième âge) (*Moniteur belge* of 26 June 1997, p. 17043), in the version in force at the material time ('the Decree of 5 June 1997'), a retirement home is an 'establishment, however described, intended to accommodate persons aged 60 or over who have their habitual residence there and who benefit there from communal domestic, cleaning and daily living assistance services and, if necessary, the care of nurses or paramedics'.

8 Article 2(2) of the Decree of 5 June 1997 defines the serviced residence as being 'one or more buildings, however described, constituting a functional unit, managed by an organising body which, in return for payment, offers persons aged 60 or over individual accommodation enabling them to lead an independent life, together with services that they may call upon as desired'. That provision states that the Government is to define the notion of functional unit and that the premises, equipment and communal services of a serviced residence may also be accessible to other persons aged 60 or over.

9 In accordance with the first paragraph of Article 5(1) of the Decree of 5 June 1997, the operation of a retirement home or a serviced residence is subject to obtaining an authorisation and, pursuant to Article 5(2) and (5) of that decree, those establishments must meet certain requirements.

10 Thus, in accordance with Article 5(2) of the Decree of 5 June 1997, retirement homes must meet certain requirements concerning:

'1. services covered by the prices for accommodation or entry;

...

6. food, hygiene and healthcare,

...

9. internal rules respecting the following principles:

...

(c) free access to the retirement home for family, friends ...'

11 It is apparent from the second paragraph of Article 5(5) of the Decree of 5 June 1997 that serviced residences must also satisfy the requirements defined by the Walloon Government concerning the matters cited in paragraph 10 of the present judgment.

12 According to the first paragraph of Article 5(5) of the Decree of 5 June 1997, the individual dwellings which serviced residences make available to residents must include at least a sitting room, a kitchen area, a bedroom, a bathroom and private toilets. In addition, pursuant to point 4 of the second paragraph of Article 5(5) of that decree, serviced residences must also meet certain requirements concerning 'the optional services which the manager is required to organise or make available at the request of residents and the conditions of access to them' ('the optional services required'), services whose 'minimum content is defined by the [Walloon] Government'.

13 It is apparent from section 2.2 of Chapter III of Annex III, entitled 'Requirements applicable to serviced residences', to the Order of the Walloon Government of 3 December 1998 implementing the Decree of 5 June 1997 (*Moniteur belge* of 27 January 1999, p. 2221 in the version in force at the material time in the main proceedings; 'the Order of 3 December 1998') that serviced residences must provide maintenance of the common areas, outside areas and equipment made available to residents, maintenance of the inside and outside windows, information on the leisure activities organised in the town as well as the visit of a representative of the organising body at least twice a year. In addition, pursuant to section 2.3 of the same chapter of Annex III to the Order of 3 December 1998, serviced residences must make available to residents the following optional services, to which residents can freely have recourse:

– the option of having three meals per day, which must include a full hot meal, either in the common room of the serviced residence intended to be used for catering and activities or in the restaurant of the retirement home or the retirement and nursing home functionally linked to the serviced residence or in the resident's private accommodation. A register is to set out, per day, the meals served to the residents, mentioning the name of the beneficiary and the information necessary for their invoicing;

– the option of having the private dwelling cleaned at least once per week;

– the option of having the resident's personal laundry attended to.

14 Moreover, it is apparent from the order of reference that the prices applied by serviced residences are set under the supervision of the Minister for Economic Affairs.

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

15 LJJ, formed in the course of 2004, is a cooperative company constituted under Belgian law whose object, at the material time, consisted in operating and managing care institutions and in engaging in all activities relating directly or indirectly to healthcare and the assistance of the sick, elderly, disabled or other persons.

16 In October 2004, LJJ informed the Belgian tax authorities of the commencement of its business activity of renting out small flats designed for able-bodied persons. Those authorities then registered LJJ for VAT purposes.

17 On 27 October 2006, LJJ received a provisional licence to operate the serviced residence 'Les jardins de Jouvence'.

18 That serviced residence makes available to its residents dwellings intended for one or two persons, comprising a fitted kitchen, a sitting room, a bedroom and a fitted bathroom. In addition, it provides them with various services for consideration, which are also offered to other persons, namely access to a bar restaurant, a hairdressing and beauty salon, a physiotherapy room, occupational therapy activities, a laundry, a pharmacy where blood can be collected and a doctor's surgery.

19 Between August 2004 and September 2006, LJJ carried out substantial building work and installed equipment corresponding to its business purposes, with a view to commencing the operation of a serviced residence.

20 On 5 October and 14 November 2006, the tax authorities carried out an audit of LJJ's accounts in order to check the way in which the VAT legislation had been applied for the period from 30 August 2004 to 30 September 2006. Following that audit, those authorities concluded that LJJ was not entitled to deduct the VAT in relation to the construction of immovable property during the period between 2004 and 2006, since that company was a taxable person whose transactions in connection with the operation of its serviced residence were exempt in their entirety from VAT pursuant to Article 44(2) of the amended VAT Code. Consequently, those authorities demanded that LJJ repay the amounts of tax wrongly deducted.

21 On 25 January 2007, the tax authorities informed LJJ of the cancellation of its VAT current account, with effect from 30 September 2006.

22 On 13 February 2007, a demand for payment was served on LJJ, which LJJ opposed, by an application, before the tribunal de première instance de Mons (Mons Court of First Instance) on 20 February 2007.

23 By a judgment of 19 June 2012, that court dismissed LJJ's application as unfounded, holding that bodies whose task or business is to care for elderly persons are exempt from VAT, in accordance with Article 44(2) of the amended VAT Code, and that there was no need to determine whether the services in question were linked in particular to welfare and to social security work and whether they were provided by public law bodies or by bodies recognised by the competent authority as being devoted to social wellbeing.

24 On 19 December 2012, LJJ lodged an appeal against that judgment before the cour d'appel de Mons (Mons Court of Appeal).

25 LJJ claimed before that court that the formal licence to operate a serviced residence did not necessarily entail recognition that it is devoted to social wellbeing, since the conditions for the approval of serviced residences are fundamentally different from those for the approval of

retirement homes. That company also observed that a material intervention on the part of the State, region or municipality, which is a constituent element of the notion of social welfare or social security, was lacking in relation to serviced residences. In the present case, LJJ did not receive any public funding and its residents did not receive any public assistance or subsidy in order to cover the costs relating to the services provided.

26 The Belgian State claimed before the *cour d'appel de Mons* (Mons Court of Appeal) that LJJ's action should be dismissed, arguing that LJJ, which provided services covered by Article 44(2) of the amended VAT Code, was a taxable person exempt from VAT, which, consequently, did not have a right to deduct that tax. The Belgian State submitted that the serviced residence operated by LJJ, licensed by the Walloon Region, was formally recognised as being devoted to social wellbeing in order to provide services closely linked to welfare. Likewise, the services provided by LJJ, which are directly linked to the accommodation, care and treatment offered to residents with a view to improving their physical and/or mental wellbeing, are devoted to social wellbeing.

27 Having doubts concerning the interpretation to be given to Article 13A(1)(g) of the Sixth Directive, the *Cour d'appel de Mons* (Mons Court of Appeal) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is a serviced residence, within the meaning of the Decree of 5 June 1997, [which operates] with a view to profit individual dwellings designed for one or two persons, comprising a fitted kitchen, a sitting room, a bedroom and a fitted bathroom, thereby enabling residents to lead an independent life, together with a range of optional services supplied against payment, with a view to profit, those services not being available exclusively to the occupants of the serviced residences (a bar restaurant, a hairdressing and beauty salon, a physiotherapy room, occupational therapy activities, a laundry, a pharmacy and blood collection point and a doctor's surgery), an essentially charitable organisation which supplies "services and goods closely linked to welfare and social security work" for the purposes of Article 13A(1)(g) of [the] Sixth Directive?

(2) Is the answer to Question 1 different if the serviced residence in question receives, for the supply of the services in question, subsidies or any other form of advantage or funding from public authorities?'

### **Consideration of the questions referred**

28 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 13A(1)(g) of the Sixth Directive must be interpreted as meaning that the services provided by a serviced residence, such as that at issue in the main proceedings, which does not receive any subsidy or any other form of advantage or financial support from public authorities, which are performed with a view to profit and consist of the making available to persons aged 60 or over of individual dwellings enabling them to lead independent lives and of the provision of optional services for consideration also accessible to non-residents, come under the exemption referred to in that provision.

29 It is apparent from the wording of Article 13A(1)(g) of the Sixth Directive that that provision applies to the supply of services and to the supply of goods which are, first, 'supplied ... by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned' and, secondly, 'closely linked to welfare and social security work' (judgments in *Kingscrest Associates and Montecello*, C-498/03, EU:C:2005:322, paragraph 34, and *Zimmermann*, C-174/11, EU:C:2012:716, paragraph 21).

30 Given that, in the present case, it is common ground that LJJ is not a body governed by

public law within the meaning of Article 13A(1)(g) of the Sixth Directive, its transactions can be exempted from VAT under that provision only in so far as LJJ falls within the concept of 'other organisations recognised as charitable by the Member State concerned' within the meaning of that provision.

31 It is therefore necessary to examine, first, whether LJJ falls within the concept of 'other organisations recognised as charitable by the Member State concerned' within the meaning of Article 13A(1)(g) of the Sixth Directive and, secondly, whether the services provided by a serviced residence, such as that at issue in the main proceedings, are 'closely linked to welfare and social security work' within the meaning of that provision.

*The condition relating to the recognition as other charitable organisations by the Member State concerned*

32 It should be observed at the outset that Article 13A(1)(g) of the Sixth Directive does not specify the conditions or the procedures for recognising organisations other than those governed by public law as charitable. In consequence, it is in principle for the national law of each Member State to lay down the rules in accordance with which that recognition may be granted to such organisations (see judgment in *Zimmermann*, C-174/11, EU:C:2012:716, paragraph 26 and the case-law cited).

33 In that context, under Article 13A(2)(a) of the Sixth Directive, Member States may make the grant of the exemption provided for in Article 13A(1)(g) to bodies other than those governed by public law subject to one or more of the conditions listed in Article 13A(2)(a). Those optional conditions for the grant of that exemption may be imposed freely and additionally by Member States (see judgment in *Zimmermann*, C-174/11, EU:C:2012:716, paragraph 27 and the case-law cited).

34 It follows therefore that Article 13A(1)(g) of the Sixth Directive grants the Member States a discretion to recognise as charitable certain organisations not governed by public law (see, to that effect, judgment in *Kingscrest Associates and Montecello*, C-498/03, EU:C:2005:322, paragraph 51 and the case-law cited).

35 In that regard, it is clear from the case-law of the Court that, when considering whether to recognise as charitable organisations other than those governed by public law, it is for the national authorities, in accordance with EU law and subject to review by the national courts, to take various factors into account. They include the existence of specific provisions, be they national or regional, legislative or administrative, or tax or social security provisions; the public interest nature of the activities of the taxable person concerned; the fact that other taxable persons carrying on the same activities already enjoy similar recognition; and the fact that the costs of the supplies in question may be largely met by health insurance schemes or other social security bodies (judgment in *Zimmermann*, C-174/11, EU:C:2012:716, paragraph 31 and the case-law cited).

36 In that context, account may also be taken of the fact that in the Walloon Region, serviced residences are, with old people's homes and day care centres, the subject of a single piece of legislation, designed to provide a framework for the various institutionalised forms of support and care for elderly persons.

37 In that regard, subject to verification by the referring court, it seems to be clear from the documents before the Court that, not only does that piece of legislation define what is covered by the notion of 'serviced residence', but it also makes the operation of a serviced residence conditional upon obtaining an authorisation issued by the Walloon Government, which is contingent upon compliance with a number of conditions and requirements. It seems to be

apparent from the documents before the Court, subject to confirmation by the referring court, that, among those conditions and requirements, some are common to serviced residences and to retirement homes.

38 It is also necessary to take into consideration, for the purpose of assessing the charitable nature of the organisation concerned, the fact that, as is apparent from the order of reference, serviced residences apply prices set under the supervision of the Minister for Economic Affairs.

39 As regards, more particularly, the fact that serviced residences operated with a view to profit, such as that operated by LJJ, do not receive any public assistance or any public financial support, it should be observed, first, that since the word 'organisation' is in principle sufficiently broad to encompass private entities carrying out activities with a view to profit (judgment in *Zimmermann*, C-174/11, EU:C:2012:716, paragraph 57), the fact that LJJ carries out its activities for such a purpose in no way precludes the classification of that company as an 'other organisation recognised as charitable by the Member State concerned' within the meaning of Article 13A(1)(g) of the Sixth Directive. Secondly, although it is apparent from the case-law cited in paragraph 35 of the present judgment that the fact that the cost of the supplies provided may be largely borne by health insurance schemes or by social security bodies may be one of the factors to be taken into consideration in order to determine whether the organisation concerned is charitable, that fact, as the Advocate General observed at point 30 of his Opinion, is only one factor among others. Therefore, the lack of public financial support does not in itself exclude such recognition, since that must be assessed in the light of all the relevant factors of the present case.

40 In those circumstances, it is for the referring court to determine, taking into consideration all the relevant factors, in particular those mentioned in paragraphs 35 to 39 of the present judgment, whether the national authorities observed, in recognising LJJ as a charitable organisation, the limits of the discretion which is accorded to them in Article 13A(1)(g) of the Sixth Directive.

*The condition that the supplies of services must be closely linked to welfare and social security work*

41 As regards the objective of the exemption provided for in Article 13A(1)(g) of the Sixth Directive, it is clear from the case-law of the Court that that provision does not provide exemption from VAT for every activity performed in the public interest, but only for those which are listed therein and described in great detail (see, to that effect, inter alia, judgments in *Stichting Uitvoering Financiële Acties*, 348/87, EU:C:1989:246, paragraph 12, and *Ygeia*, C-394/04 and C-395/04, EU:C:2005:734, paragraph 16). By treating certain supplies of services in the public interest in the social sector more favourably for the purposes of VAT, that exemption is intended to reduce the cost of those services and to make them more accessible to the individuals who may benefit from them (judgment in *Kingscrest Associates and Montecello*, C-498/03, EU:C:2005:322, paragraph 30).

42 It must be pointed out that the wording of Article 13A(1)(g) of the Sixth Directive expressly mentions the supply of services by old people's homes among the supply of services and of goods closely linked to welfare and social security work, which thus come under the exemption provided for by that provision.

43 In that regard, it should be noted that old people's homes, like serviced residences, provide persons aged 60 or over with a dwelling with various support and care services. First, the same treatment with regard to VAT should be given to the service consisting of the provision of dwellings, whether those dwellings are provided by an old people's home or whether they are provided by a serviced residence. Secondly, in so far as those support and care services which serviced residences are obliged to offer, pursuant to the relevant national legislation, correspond



to those which old people's homes must provide in accordance with that legislation, they should be given the same treatment with regard to VAT.

44 Consequently, among the services provided by a serviced residence, such as that at issue in the main proceedings, those consisting of the provision of dwellings adapted for elderly persons may benefit from the exemption provided for by Article 13A(1)(g) of the Sixth Directive. In principle, the other services also benefit from the exemption provided for by that provision, on condition in particular that those services, which that serviced residence is obliged to offer pursuant to national legislation, are intended for the support and care of elderly persons and correspond to the services which old people's homes are obliged to offer also in accordance with national legislation.

45 Moreover, contrary to what is claimed by LJJ and Axa Belgium SA ('Axa'), that finding is not invalidated by the fact that the organisation which operates the serviced residence does not receive any public financial assistance and that the services which it provides do not confer entitlement to any financial support from the social security funds.

46 In that regard, it should be noted that the wording of Article 13A(1)(g) of the Sixth Directive does not lay down any requirement which is linked to public financial assistance in favour of the operator concerned or to financial support from public authorities or from social security organisations in favour of the recipients of the services provided. As the Belgian Government stated at the hearing, that provision attaches importance to the intrinsic nature of the transactions carried out and to the status of the operator providing the services or supplying the goods at issue and not to the specific way in which that operator is financed or to the consideration paid to that operator.

47 Furthermore, it should be observed that the exemptions provided for in Article 13A(1) of the Sixth Directive are autonomous concepts of EU law and that they must therefore be given an EU definition (judgment in *Kingscrest Associates and Montecello*, C-498/03, EU:C:2005:322, paragraph 22). However, to define the services referred to in Article 13A(1)(g) of the Sixth Directive by reference to the existence of public financial support in favour of the operator or the taking responsibility for the costs of the services by social security bodies would make that concept dependent on the specific features of the relevant legislation of the Member States, which could compromise the autonomous interpretation that must be given to that concept and could create discrepancies in its application within the European Union.

48 Moreover, the Court must reject the objection raised by LJJ and by Axa, according to which operators not eligible for public funding would be at a competitive disadvantage in relation to operators receiving such funding because, not being able to deduct VAT, the former would have to pass on in full to the recipients of their services the costs relating to their upstream construction work, including the relevant VAT, a situation which, they claim, would therefore be contrary to the principle of fiscal neutrality.

49 According to well-established case-law, the principle of fiscal neutrality precludes, in particular, treating similar goods or supplies of services, which are thus in competition with each other, differently for VAT purposes (see judgment in *Zimmermann*, C-174/11, EU:C:2012:716, paragraph 48 and the case-law cited).

50 However, in the present case, the lack of financial assistance from public authorities to LJJ and the fact that social security bodies do not assume responsibility for the price of the services performed by LJJ have no bearing on the nature of the services provided by LJJ, those services being comparable to services provided by other operators receiving public assistance or financial support from public authorities. Therefore, the principle of fiscal neutrality does not preclude giving the same treatment, with regard to VAT, to those services.

51 Moreover, it should be observed that, according to the wording of the first question, among the services offered by LJJ in connection with its operation of a serviced residence, some paid services are provided on an optional basis both to residents of the serviced residence and to non-residents. In particular, those services concern access to a bar restaurant, a hairdressing and beauty salon, a physiotherapy room, occupational therapy activities, a laundry, a pharmacy where blood can be collected and a doctor's surgery.

52 In that regard, it must be borne in mind that, in accordance with the first indent of Article 13A(2)(b) of the Sixth Directive, the Member States are not to exempt the supply of services envisaged, inter alia, in Article 13A(1)(g) if they are not essential to the transactions exempted. As is apparent from the case-law of the Court, that provision, which is binding on the Member States, lays down conditions which must be taken into account for the interpretation of the various exemptions referred to therein, which, like that provided for in Article 13A(1)(g), concern the supply of services or goods which are 'closely related' or 'closely linked' to an activity in the public interest (see, to that effect, judgment in *Ygeia*, C-394/04 and C-395/04, EU:C:2005:734, paragraph 26).

53 As regards the services provided on an optional basis, mentioned in paragraph 51 of the present judgment, it is for the national court to determine which of them are required under the applicable national legislation. Such services, provided that they are services corresponding to those offered by old people's homes, may be regarded as being closely linked, in particular, to welfare and are essential to the services exempted.

54 In that context, it should be noted that it is apparent from the observations submitted by LJJ and by Axa that the Order of 3 December 1998 lists, as the optional services required, catering services, services for the cleaning of the private dwellings at least once per week and services of attending to residents' personal laundry. It appears, therefore, that those optional services, provided that they correspond to services offered by old people's homes, are essential to the carrying out by a serviced residence of the transactions exempted. However, as regards the provision of other optional services in the circumstances at issue in the main proceedings, such as hairdressing and beauty services, it is not apparent that the national legislation requires that serviced residences offer those services, nor does it appear to require that old people's homes do so, and thus such optional services cannot be regarded as essential to the carrying out by a serviced residence of the transactions exempted. It is however for the national court to verify that point.

55 In the light of all the foregoing considerations, the answer to the questions referred is that

– Article 13A(1)(g) of the Sixth Directive must be interpreted as meaning that, among the services provided by a serviced residence, such as that at issue in the main proceedings, whose charitable nature must be assessed by the referring court in the light of, in particular, the factors mentioned in the present judgment, those consisting of the provision of dwellings adapted for elderly persons may benefit from the exemption referred to in that provision. The other services provided by that serviced residence may also benefit from that exemption, provided in particular that the services which serviced residences are obliged to offer pursuant to the relevant national legislation are intended to achieve the support and care of elderly persons and correspond to the

services which old people's homes are also obliged to offer in accordance with national legislation.

– It is irrelevant in this respect whether or not the operator of a serviced residence such as that at issue in the main proceedings receives a subsidy or any other form of advantage or financial support from public authorities.

### **Costs**

56 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

**Article 13A(1)(g) 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 must be interpreted as meaning that, among the services provided by a serviced residence, such as that at issue in the main proceedings, whose charitable nature must be assessed by the referring court in the light of, in particular, the factors mentioned in the present judgment, those consisting of the provision of dwellings adapted for elderly persons may benefit from the exemption referred to in that provision. The other services provided by that serviced residence may also benefit from that exemption, provided in particular that the services which serviced residences are obliged to offer pursuant to the relevant national legislation are intended to achieve the support and care of elderly persons and correspond to the services which old people's homes are also obliged to offer in accordance with national legislation.**

**It is irrelevant in this respect whether or not the operator of a serviced residence such as that at issue in the main proceedings receives a subsidy or any other form of advantage or financial support from public authorities.**

[Signatures]

\* Language of the case: French.