

JUDGMENT OF THE COURT (Second Chamber)

26 May 2016 (*)

(Preliminary ruling — Common system of value added tax — Sixth Directive 77/388/EEC — Exemption — Article 13B(d)(3) — Transactions in respect of payments and transfers — Concept — Purchase of tickets for shows or other events — Payment by debit or credit card — ‘Card processing’ services’)

In Case C-130/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Upper Tribunal (Tax and Chancery Chamber), United Kingdom, made by decision of 11 March 2015, received at the Court on 13 March 2015, in the proceedings

Commissioners for Her Majesty’s Revenue and Customs

v

National Exhibition Centre Limited,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader, A. Rosas, A. Prechal and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 December 2015,

after considering the observations submitted on behalf of:

- National Exhibition Centre Limited, by O. Jarratt, advocate, B. Horn and A. Bache, Solicitors, and by J. Peacock QC,
- the United Kingdom Government, by M. Holt, acting as Agent, and by K. Beal QC,
- the Greek Government, by K. Nasopoulou and S. Lekkou, acting as Agents,
- the Portuguese Government, by L. Inez Fernandes, A. Cunha and R. Campos Laires, acting as Agents,
- the Finnish Government, by H. Leppo, acting as Agent,
- the European Commission, by R. Lyal and L. Lozano Palacios, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 13B(d)(3) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, ‘the Sixth Directive’).

2 The reference has been made in proceedings between the Commissioners for Her Majesty’s Revenue and Customs (‘the tax authority’) and the National Exhibition Centre Limited (‘the NEC’) regarding a refusal to reimburse value added tax (VAT) which the NEC considers that it unduly paid on the supply of certain services.

Legal context

EU law

3 Article 2(1) of the Sixth Directive makes subject to VAT ‘the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such’.

4 Article 13B(d), point 3 of that directive provides:

‘Without prejudice to other Community provisions, Member States shall exempt ...

...

(d) the following transactions:

...

3. transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring ...’

UK law

5 Section 31(1) of the Value Added Tax Act 1994 (‘the 1994 Act’) provides that ‘A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9’.

6 Schedule 9 refers to several groups of goods and services that qualify for exemption from VAT. Group 5 in that schedule covers finance. It provides exemption for the following services:

‘ ...

1. The issue, transfer or receipt of, or any dealing with, money, any security for money or any note or order for the payment of money.

...

5. The provision of intermediary services in relation to any transaction comprised in item 1, 2, 3, 4 or 6 (whether or not any such transaction is finally concluded) by a person acting in an intermediary capacity.

...'

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

7 The NEC owns and operates the National Exhibition Centre and other venues in Birmingham (United Kingdom) which are used to stage trade and public exhibitions, sporting events, concerts and other events. It hires its venues to third party promoters and sells tickets for those events. It does not at any time take ownership of the tickets as the agent for those promoters. The tickets can be bought from the NEC's call centre, via its website, by post or over the counter.

8 During the relevant period, from 1 August 1999 to 30 April 2002, when customers bought tickets for events taking place in NEC venues and paid by debit card in the case of remote payment, or by credit card in all cases, NEC invoiced them, in addition to the price of the tickets, for a 'booking fee' which increased the price by about 10%, or even more for certain events. NEC refunded the event promoter the part of the amount paid by the customer corresponding to the ticket price and kept the amount corresponding to the booking fee.

9 The Upper Tribunal (Tax and Chancery Chamber) notes that, in practice, the purchase of a ticket paid for by debit or credit card, for example by telephone, takes place as follows. After confirming the availability of the ticket sought by the customer, NEC informs the customer of the ticket price and the booking fee and other applicable fees, takes that customer's details and the information concerning his payment card, such as the card number, the authorisation code on the back of the card and its expiry date, and transfers those details from its computer programme for checking the availability of places to its computer programme 'allowing the secure movement of data for electronic funds transfers'. By means of that programme, NEC passes that information to its merchant acquirer bank which in turn forwards the information to the cardholder's bank, the 'card issuer'. If the card issuer accepts the transaction, it sends back an authorisation code to NEC via the merchant acquirer bank. Once that code is received, NEC informs the customer that the operation has been authorised and allocates the ticket to him.

10 By means of the same computer programme allowing the secure movement of data for electronic funds transfers, each day NEC creates a file of all the card transactions that have taken place, including, inter alia, the amount of the payment, the card number and the authorisation codes and, at the end of the day, it sends that file to the relevant card issuers via the merchant acquirer bank. Once those files are received by the card issuers, payment — corresponding to the price of the ticket plus the booking fee and other fees after deduction of the commission charged to NEC by its merchant acquirer bank — is made to NEC's account, once more via the merchant acquirer bank. NEC then holds the amounts paid for the tickets in its capacity as agent for the relevant promoter and holds the booking fees and other fees for itself, and the relevant tickets are issued and sent to the customer.

11 On 27 November 2002, the NEC claimed a VAT repayment on the basis that it considered that it had overpaid in respect of the booking fees charged to customers during the period from 1 August 1999 to 30 April 2002. By a decision of 27 February 2003, the tax authority refused that claim on the basis that those fees charged by NEC were consideration for supplies that were subject to VAT at the standard rate.

12 On 27 February 2003, the NEC lodged an appeal against that decision before the First-tier Tribunal (Tax Chamber). By a decision of 7 May 2013, that tribunal held, first, that the booking fees charged by the NEC corresponded to a debit or credit card processing service ('the card processing service') and, secondly, that those booking fees were exempt from VAT on the basis

that they were consideration for an exempt financial service under Article 13B(d)(3) of the Sixth Directive.

13 The tax authority appealed to the Upper Tribunal (Tax and Chancery Chamber) against that decision, contending that the NEC did not supply a card processing service to its customers and that, in any event, the supply made by the NEC did not fall within the exemption provided for in Article 13B(d)(3) of the Sixth Directive. That supply did not consist, or at least not principally, in the performance of a service that possesses the essential characteristics that were identified by the Court of Justice in its judgment of 5 June 1997 in *SDC* (C?2/95, EU:C:1997:278). Alternatively, in any event, it came within the concept of ‘debt recovery’, an activity expressly excluded from the benefit of that exemption.

14 The NEC maintains, on the other hand, that when it takes debit or credit card details from a customer, seeks authorisation for the payment from the card issuer, confirms payment by the customer for the benefit of the promoter once authorisation is received, and then creates a file containing daily transaction details which is sent via the merchant acquirer to the card-issuing bank on the basis of which payment is automatically made, it is debiting one account and crediting another, and accordingly performing an exempt transaction within the meaning of Article 13B(d)(3) of the Sixth Directive. In any event, the concept of ‘debt collection’ does not apply to that supply, that concept not extending to services provided to debtors.

15 On 20 January 2015, the referring court dismissed the appeal brought by the tax authority in so far as it related to the issue of the nature of the supply made by NEC. In relation to the exemption issue, that court states that, in the light of the arguments which were presented before it and the case-law of the Court of Justice, it questions whether it is possible to apply the exemption under Article 13B(d)(3) of the Sixth Directive for ‘transactions ... concerning ... payments, transfers’ to a card processing service of the kind at issue before it.

16 In those circumstances, the Upper Tribunal (Tax and Chancery Chamber) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) With regard to the exemption from VAT in Article 13B(d)(3) of the [Sixth Directive] as interpreted by the Court of Justice in the judgment of 5 June 1997 in *SDC* (C?2/95, EU:C:1997:278), what are the relevant principles to be applied for determining whether or not a service has “the effect of transferring funds and entail[s] changes in the legal and financial situation” within the meaning of paragraph 66 of that judgment? In particular:

(a) Is the exemption applicable to a service, such as that performed by the taxpayer in the present case, which does not involve the taxpayer debiting or crediting any accounts over which it has control, but which is, where a transfer of funds results, the cause of a transfer of funds made by an independent financial institution?

(b) In a case where payment is made by credit or debit card, does the answer to Question [a] depend on whether the service provider itself obtains authorisation codes directly from the cardholder’s bank, or alternatively obtains those codes via its merchant acquirer bank?

(c) What factors distinguish (i) a service which consists in the provision of financial information without which a payment would not be made but which do not fall within the exemption [such as in the judgment of 28 July 2011 in *Nordea Pankki Suomi* (C?350/10, EU:C:2011:532), from (ii) a data handling service which functionally has the effect of transferring funds and which the Court of Justice has identified as therefore being capable of falling within the exemption [such as in the judgment of 5 June 1997 in *SDC* (C?2/95, EU:C:1997:278) at paragraph 66]?

(2) What are the relevant principles to be applied for determining whether or not a service such as that performed by the taxpayer in the present case falls within the scope of the “debt collection” exclusion from the exemption in Article 13B(d)(3) of the Sixth Directive? In particular, if a service of processing payment by a particular method (e.g. debit or credit card) would, pursuant to the principles in the judgment of 28 October 2010 in *Axa UK* (C?175/09, EU:C:2010:646), constitute “debt collection” in circumstances where the supply of that service was to the person to whom that payment was due (i.e. the person receiving the payment), will that service also constitute “debt collection” in circumstances where the supply of that service is to the person from whom the payment is due (i.e. the person making the payment)? Further, in the circumstances of this case, does a “debt” even exist to be “collected”?’

Consideration of the questions referred

Preliminary observations

17 The referring court bases its request for a preliminary ruling on the premiss that the card processing service, performed by the NEC when a person buys, via the NEC, a ticket for a show or other event organised in one of its venues which he pays for by means of a debit or credit card, constitutes a separate service which is independent from the sale, marketing or reservation of that ticket.

18 The Court, however, has already held that the additional charges invoiced by a service provider to its customers, where the latter pay for those services by credit card, debit card, cheque or cash over the counter at a bank or authorised payment agent acting on behalf of that service provider, do not constitute consideration for a supply of services distinct and independent from the principal supply of services in respect of which that payment was made (see, to that effect, judgment of 2 December 2010 in *Everything Everywhere*, C?276/09, EU:C:2010:730, paragraph 32).

19 In that regard, the Court held, first, that the making available to customers, by the principal service provider, of an infrastructure enabling them to pay the price of that service, inter alia, by bank card does not constitute for those customers an end in itself and that the supposed supply of services, which those customers are unable to access separately from the purchase of the main service, can have no interest for such consumers that is independent of that service (see, to that effect, judgment of 2 December 2010 in *Everything Everywhere*, C?276/09, EU:C:2010:730, paragraph 27).

20 The Court then added that the receipt of a payment and the handling of that payment are intrinsically linked to any supply of services provided for consideration and that it is inherent in such a supply that the provider should seek payment and make appropriate efforts to ensure that the customer can make effective payment in consideration for the service supplied, the Court holding that, in principle, any method of payment for a supply of services involves the provider taking certain steps in the handling of the payment, even if the extent of those steps may vary from one method of payment to another (see, to that effect, judgment of 2 December 2010 in *Everything Everywhere*, C?276/09, EU:C:2010:730, paragraph 28).

21 Lastly, the Court stated that the fact that a separate price for the supposed financial service is identified in the contract document and itemised separately in the invoices issued to customers is not decisive in that regard, the Court holding that the fact that a single price is invoiced, or that separate prices were contractually stipulated, has no decisive significance for the purposes of determining whether it is necessary to find that there are two or more distinct and independent transactions or only a single economic transaction (see, to that effect, judgment of 2 December

2010, *Everything Everywhere*, C?276/09, EU:C:2010:730, paragraph 29 and the case-law cited).

22 In accordance with the Court's settled case-law, it is for the national court to assess if, having regard to the economic and commercial reality of the transactions at issue, the contractual structure of the transaction notwithstanding, the material put before the court discloses the characteristics of a single transaction (see, to that effect, judgments of 21 February 2008 in *Part Service*, C?425/06, EU:C:2008:108, paragraph 54, and of 20 June 2013 in *Newey*, C?653/11, EU:C:2013:409, paragraphs 42 to 45) and having regard to all the circumstances in which the transaction takes place (see, to that effect, judgment of 2 December 2010 in *Everything Everywhere*, C?276/09, EU:C:2010:730, paragraph 26 and the case-law cited).

23 In the light of those factors, it is for the referring court to ascertain whether, in the main proceedings, the NEC's card processing service must be considered for VAT purposes to be a service which is ancillary to the sale of the tickets concerned or as a service ancillary to another principal service which is provided by the NEC to the purchasers of those tickets, which could be the reservation or the delivery of tickets for shows or other events and, therefore, forming with that principal service a single service with the result that that service must share the tax treatment of that principal service (see, to that effect, judgments of 25 February 1999 in *CPP*, C?349/96, EU:C:1999:93, paragraph 32, and of 16 April 2015 in *Wojkowa Agencja Mieszkaniowa w Warszawie*, C?42/14, EU:C:2015:229, paragraph 31).

24 Subject to that reservation, in the present case the Court must provide the interpretation of the EU law sought by the referring court.

The first question

25 By its first question and the three sub-questions, which it is necessary to consider together, the referring court asks, in essence, whether Article 13B(d)(3) of the Sixth Directive must be interpreted as meaning that the VAT exemption which is laid down there applies to a 'card processing' service, such as that in the main proceedings, carried out by taxable person, the provider of that service, where an individual buys, via that provider, a ticket for a show or other event which it sells in the name and on behalf of another entity and which that individual pays for by credit or debit card.

26 It is apparent from the order for reference that the card processing service consists, first, of the service provider obtaining from the buyer the details of the debit or credit card which that buyer wishes to use and transmitting those details to its merchant acquirer bank which then transmits them to the card issuer. Next, it consists — when the card issuer, after receipt of those details, has confirmed to the merchant acquirer bank, by transmitting to the latter an authorisation code, the validity of the card and the availability of the necessary funds — of the receipt of that code by the provider via its merchant acquirer bank, which authorises it to make the sale. Lastly, it consists of the retransmission by that provider to its merchant acquirer bank, at the end of the day, of a settlement file summarising all the sales made during the day and including the relevant details of the payment cards used, including the authorisation codes, which is forwarded by the merchant acquirer bank to the various card issuers, who then make the payments or transfers to that merchant acquirer bank, which transfers the relevant funds to the account of the service provider.

27 As a preliminary point, it should be noted that the exemptions provided for in Article 13B(d)(1) to (6) of the Sixth Directive have been carried over, without any substantive changes, to Article 135(1)(b) to (g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1). The case-law concerning those new provisions is, therefore, relevant in interpreting the equivalent provisions in the Sixth Directive.

28 In accordance with the Court's settled case-law, the exemptions laid down in Article 13 of the Sixth Directive constitute independent concepts of EU law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another (see judgments of 10 March 2011 in *Skandinaviska Enskilda Banken*, C-540/09, EU:C:2011:137, paragraph 19 and the case-law cited and of 22 October 2015 in *Hedqvist*, C-264/14, EU:C:2015:718, paragraph 33 and the case-law cited).

29 It is also established case-law that the terms used to specify those exemptions are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, inter alia, judgments of 28 July 2011 in *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 23 and of 22 October 2015 in *Hedqvist*, C-264/14, EU:C:2015:718, paragraph 34 and the case-law cited).

30 In that context, it should be noted that Article 13B(d)(3) of the Sixth Directive provides that Member States may exempt 'transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments but excluding debt collection and factoring'.

31 The transactions exempted under that provision are thus defined according to the nature of the services provided and in terms of the person supplying or receiving the service. Accordingly, the exemption is not subject to the condition that the transactions be effected by a certain type of institution or legal person where the transactions in question relate to the sphere of financial transactions (see judgment of 28 October 2010 in *Axa UK*, C-175/09, EU:C:2010:646, paragraph 26 and the case-law cited).

32 In the present case, it is common ground that only the exemption provided for in Article 13B(d)(3) of the Sixth Directive in favour of 'transactions ... concerning ... payments [and] transfers' is relevant to the case at issue in the main proceedings.

33 The Court has already held that a transfer is a transaction consisting of the execution of an order for the transfer of a sum of money from one bank account to another. It is characterised in particular by the fact that it involves a change in the legal and financial situation existing, on the one hand, between the person giving the order and the recipient and, on the other, between those parties and their respective banks and, in some cases, between the banks. Moreover, the transaction which produces this change is simply the transfer of funds between accounts, irrespective of its cause. Thus, a transfer being only a means of transmitting funds, the functional aspects are decisive for the purpose of determining whether a transaction constitutes a transfer for the purposes of Article 13B(d)(3) of the Sixth Directive (see, to that effect, judgments of 5 June 1997 in *SDC*, C-2/95, EU:C:1997:278, paragraph 53 and of 28 July 2011 in *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 25).

34 Furthermore, the wording of point 3 of Article 13B(d) of the Sixth Directive does not in principle preclude a transfer from being broken down into separate services which then constitute 'transactions concerning transfers' within the meaning of that provision (judgment of 5 June 1997 in *SDC*, C-2/95, EU:C:1997:278, paragraph 64). While it cannot be ruled out that the exemption at issue may include services which are not intrinsically transfers, it remains the case that that exemption can relate only to transactions which, viewed broadly, form a distinct whole and which fulfil in effect the specific, essential functions of such transfers (see, to that effect, judgment of 5 June 1997 in *SDC*, C-2/95, EU:C:1997:278, paragraphs 66 to 68).

35 It follows from the above that in order to be characterised as transactions concerning transfers for the purposes of Article 13B(d)(3) of the Sixth Directive, the services at issue must,

viewed broadly, form a distinct whole, fulfilling in effect the specific, essential functions of a transfer and, therefore, have the effect of transferring funds and entail changes in the legal and financial situation. In this regard, a service which is exempt under the Sixth Directive must be distinguished from a mere physical or technical supply. Accordingly, the national court must examine in particular the extent of the responsibility of the supplier of services vis-à-vis the banks, in particular the question whether that responsibility is restricted to technical aspects or whether it extends to the specific, essential aspects of the transactions (see, to that effect, judgments of 5 June 1997 in *SDC*, C-2/95, EU:C:1997:278, paragraph 66, and of 28 July 2011 in *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 24).

36 It should also be stated that, as the functional aspects are decisive in determining whether a transaction concerns a transfer within the meaning of Article 13B(d)(3) of the Sixth Directive, the criterion by which a transaction having the effect of transferring funds and entailing changes in the legal and financial situation, within the meaning of the case-law referred to in paragraphs 33 to 35 of the present judgment, coming within the exemption at issue, can be distinguished from a transaction not having such effects and, therefore, not coming within that exemption, is whether the transaction in question transfers, actually or potentially, the ownership of the funds in question or has the effect of fulfilling the specific, essential aspects of such a transfer (see, to that effect, judgment of 28 July 2011 in *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 33).

37 In that regard, although the fact that the service provider in question itself debits directly and/or credits an account or intervenes by way of accounting entries on the accounts of the same account holder, permits, in principle, a finding that that condition is met and that the service in question qualifies as exempt (see, to that effect, judgment of 13 March 2014 in *ATP PensionService*, C-464/12, EU:C:2014:139, paragraphs 80, 81 and 85), the mere fact that that service does not directly include such a task cannot, however, exclude from the outset that it falls within the exemption concerned, considering that the interpretation referred to in paragraph 33 of the present judgment does not presuppose any particular method for effecting transfers (see, to that effect, judgment of 13 March 2014 in *ATP PensionService*, C-464/12, EU:C:2014:139, paragraph 80).

38 Furthermore, according to the Court's settled case-law, considerations relating to transactions concerning transfers are also applicable to transactions concerning payments (see, to that effect, judgments of 5 June 1997 in *SDC*, C-2/95, EU:C:1997:278, paragraph 50, and of 28 July 2011 in *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 26).

39 In the present case, it should be noted that, as is apparent from the description in paragraph 26 of the present judgment, a card processing service, such as that at issue in the main proceedings, results in the execution of a payment or transfer and such a service may be regarded as being indispensable for that execution, since, as is apparent from the decision to refer, it is the transmission of the settlement file at the end of the day by the service provider to his merchant acquirer bank which triggers the payment process or the transfer of the sums concerned from the card issuers to the merchant acquirer bank and, ultimately, to the service provider's account, and that only the payments or transfers in respect of which the necessary information is included in that file are actually made.

40 However, first, as Article 13B(d)(3) of the Sixth Directive must be interpreted strictly, the mere fact that a service is essential for completing an exempt transaction does not warrant the conclusion that that service is exempt (see, to that effect, judgments of 5 June 1997 in *SDC*, C-2/95, EU:C:1997:278, paragraph 65, and of 28 July 2011 in *Nordea Pankki Suomi*, C-350/10, EU:C:2011:532, paragraph 31).

41 Secondly, neither the obtaining by the service provider from the purchaser of the card

details which the purchaser wishes to use, nor their transmission by that service provider to its merchant acquirer bank, nor the receipt by that service provider of the authorisation code sent by the card issuer, nor even the forwarding by that service provider to his merchant acquirer bank, at the end of the day, of the settlement file containing, inter alia, the authorisation codes relating to the sales can individually, or taken together, be considered to be carrying out a specific, essential function of a payment or transfer transaction within the meaning of Article 13B(d)(3) of the Sixth Directive.

42 It is common ground, having regard to that description, that the provider of such a service neither debits or credits directly the accounts concerned, nor intervenes by way of accounting entries, nor even orders such a debit or credit since it is the buyer who, by using his payment card for a purchase, decides that his account will be debited in favour of a third party's account.

43 Furthermore, as the European Commission indicated at the hearing, the settlement files presented by a services supplier to its merchant acquirer bank are nothing more than a demand for payment in electronic form. The forwarding of such a file at the end of the day is, consequently, only to inform the relevant payment system that a previously authorised sale has indeed taken place. It cannot, therefore, be regarded as executing the payment or transfer concerned or as having the effect of fulfilling the specific, essential functions.

44 It must also be stated that, as is apparent from the decision to refer, the authorisation code — which the supplier, moreover, simply requests, receives and forwards and over the issuing of which he has, therefore, no control — which is contained in that file represents only authorisation to proceed with the sale which the card issuer concerned supplies to the service provider via the merchant acquirer bank. It is not, therefore, a specific, essential function of the transfer of ownership of the funds in question. Consequently, the fact that such a code is obtained by the provider of that service directly from the card issuer, or indeed via its merchant acquirer bank, is without relevance in determining whether or not a card processing service, such as that at issue in the main proceedings, falls within the exemption at issue.

45 Thirdly, it is not apparent from the decision to refer that the provider of such a service assumes responsibility in relation to the making of the legal and financial changes which characterise the existence of an exempt transfer or payment transaction within the meaning of Article 13B(d)(3) of the Sixth Directive and, therefore, concerning the specific, essential functions of the fund transfer process which takes place between the card issuers and the merchant acquirer bank, then from the merchant acquirer bank to the account of that service provider.

46 It follows from all of those factors that the provider of a payment card processing service, such as that at issue in the main proceedings, does not participate specifically and essentially in the legal and financial changes giving rise to a transfer in the ownership of the funds concerned and permitting, in accordance with the Court's case-law, the transaction to be characterised as a transaction concerning payments or transfers which is exempt under Article 13B(d)(3) of the Sixth Directive, but merely applies technical and administrative means which enable it to collect information and communicate that information to the merchant acquirer bank and to receive, by the same means, the information which enables it to make a sale and receive the corresponding funds.

47 In that regard, it should be borne in mind that the automated nature of such a service and, in particular, the fact that the sending of the settlement file automatically triggers the payments or transfers under consideration, cannot alter the nature of the service supplied and, consequently, has no bearing on the application of the exemption in question (see, to that effect, judgment of 5 June 1997 in *SDC*, C-2/95, EU:C:1997:278, paragraph 37).

48 A card processing service, such as that at issue in the main proceedings, thus consisting, in essence, of an exchange of information between a trader and its merchant acquirer bank with a view to receiving payment for goods or services offered for sale, cannot fall within the exemption provided for in Article 13B(d)(3) of the Sixth Directive for transactions concerning payments and transfers.

49 Moreover, first, such a service cannot be considered to be, by its nature, a financial transaction within the meaning of Article 13B(d) of the Sixth Directive, unless the view were taken that any trader who takes the steps necessary to receive a payment by debit or credit card carries out a financial transaction within the meaning of that provision, which would render that concept meaningless and would be contrary to the requirement that VAT exemptions be strictly interpreted.

50 Secondly, to grant the exemption provided for in Article 13B(d)(3) of the Sixth Directive to a card processing service, such as that at issue in the main proceedings, would run counter to the objectives pursued by the exemption of financial transactions which seeks to alleviate the difficulties connected with determining the tax base and the amount of VAT deductible and to avoid an increase in the cost of consumer credit (judgment of 19 April 2007 in *Velvet & Steel Immobilien*, C-455/05, EU:C:2007:232, paragraph 24 and the order of 14 May 2008 in *Tiercé Ladbroke and Derby*, C-231/07 and C-232/07, not published, EU:C:2007:332, paragraph 24).

51 The VAT liability of a card processing service, such as that at issue in the main proceedings, does not present such difficulties. In particular, the taxable amount, which corresponds to the consideration received in return for that service, that is to say the commission charged to the ticket purchaser for that service, can easily be determined and such a transaction does not involve any credit to the purchaser by that service provider. Such a service does not therefore qualify for exemption under Article 13B(d)(3) of the Sixth Directive.

52 In the light of all the foregoing considerations, the answer to the first question and the sub-questions is that Article 13B(d)(3) of the Sixth Directive must be interpreted as meaning that the VAT exemption which is provided in respect of transactions concerning payments and transfers does not apply to a service described as ‘processing of payment by debit or credit card’, such as that at issue in the main proceedings, carried out by a taxable person, the provider of that service, where an individual buys, via that provider, a ticket for a show or other event which the provider sells in the name and on behalf of another entity which that individual pays for by debit or credit card.

The second question

53 Given the answer to the first question, there is no need to answer the second question.

Costs

54 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 (Second Chamber) hereby rules:

Article 13B(d)(3) of the 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 the exemption from value added tax which is provided for in that article in respect of transactions concerning payments and transfers does not apply to a service described as ‘processing of payment by debit or credit card’, such as that at issue in the main

proceedings, carried out by a taxable person, the provider of that service, where an individual buys, via that provider, a ticket for a show or other event which the provider sells in the name and on behalf of another entity, which that individual pays for by debit or credit card.

[Signatures]

*Language of the case: English.