

Case C-497/01

Zita Modes Sàrl

v

Administration de l'enregistrement et des domaines

(Reference for a preliminary ruling from the Tribunal
d'arrondissement de Luxembourg)

(Sixth VAT Directive — Article 5(8) — Transfer of a totality of assets —
Continuation by the transferee in the same branch of business as the transferor —
Legal authorisation to pursue the activity)

Opinion of Advocate General Jacobs delivered on 26 September 2002 . . . I-14395

Judgment of the Court (Fifth Chamber), 27 November 2003 I-14410

Summary of the Judgment

*Tax provisions — Harmonisation of laws — Turnover taxes — Common system of
value added tax — Taxable amount — Supply of goods — Option for the Member
States to exclude a transfer of a totality of assets or part thereof — Scope
(Council Directive 77/388, Art. 5(8))*

Article 5(8) of Sixth Directive 77/388 must be interpreted as meaning that when a Member State has made use of the option in the first sentence of that paragraph to consider that, for the purposes of value added tax, no supply of goods has taken place in the event of a transfer of a totality of assets, that no-supply rule applies — without prejudice to use of the possibility of restricting its application in the circumstances laid down in the second sentence of the same paragraph — to any transfer of a business or an independent part of an undertaking, including tangible elements and, as the case may be, intangible elements which, together, constitute an undertaking or a part of an undertaking capable of carrying on an independent economic activity. The transferee must however intend to operate the business or the part of the undertaking transferred and not simply to immediately liquidate the activity concerned and sell the stock, if any.

On the other hand, nothing in the provision cited above requires that the transferee pursue prior to the transfer the same type of economic activity as the transferor.

Further, the restriction by a Member State of the application of that no-supply rule to transfers of a totality of assets where the transferee holds the authorisation for the pursuit of the economic activity which that totality enables to be carried on infringes that provision.

(see paras 45-46, 55,
operative part 1-2)