JUDGMENT OF THE COURT (Fifth Chamber)

17 May 2001 *

In Joined Cases C-322/99 and C-323/99,

REFERENCE to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between

Finanzamt Burgdorf

and

Hans-Georg Fischer (C-322/99)

and between

Finanzamt Düsseldorf-Mettmann

and

Klaus Brandenstein (C-323/99),

* Language of the case: German.

on the interpretation of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1),

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur), D.A.O. Edward, P. Jann and L. Sevón, Judges,

Advocate General: F.G. Jacobs,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the German Government, by W.-D. Plessing and B. Muttelsee-Schön, acting as Agents (Cases C-322/99 and C-323/99),

— the Greek Government, by V. Kyriazopoulos and G. Alexaki, acting as Agents (Case C-322/99),

— the Commission of the European Communities, by E. Traversa and K. Gross, acting as Agents (Cases C-322/99 and C-323/99),

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Brandenstein, represented by E. Willing, Rechtsanwalt, of the German Government, represented by B. Muttelsee-Schön and by F. Huschers, acting as Agent, and of the Commission, represented by K. Gross, at the hearing on 12 October 2000,

after hearing the Opinion of the Advocate General at the sitting on 14 December 2000,

gives the following

Judgment

1 By orders of 15 July 1999, received at the Court on 27 August 1999, the Bundesfinanzhof referred to the Court for a preliminary ruling pursuant to Article 234 EC a number of questions on the interpretation 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, hereinafter 'the Sixth Directive').

2 Those questions were raised in proceedings between, in Case C-322/99, the Finanzamt Burgdorf and Mr Fischer and, in Case C-323/99, the Finanzamt Düsseldorf-Mettmann and Mr Brandenstein concerning liability for value added tax ('VAT') on the allocation by taxable persons for their private use of motor vehicles which they had purchased from private individuals without VAT being deductible but where VAT on supplies of various services and goods for those vehicles had been deductible.

Legal framework

Community legislation

3 Article 5(6) of the Sixth Directive provides:

'The application by a taxable person of goods forming part of his business assets for his private use... or more generally their application for purposes other than those of his business, where the value added tax on the goods in question or the component parts thereof was wholly or partly deductible, shall be treated as supplies made for consideration. However, applications for the giving of samples or the making of gifts of small value for the purposes of the taxable person's business shall not be so treated.'

4 Article 6(2)(a) of the Sixth Directive lays down a similar rule for the supply of services:

'The following shall be treated as supplies of services for consideration:

(a) the use of goods forming part of the assets of a business for the private use of the taxable person... or more generally for purposes other than those of his business where the value added tax on such goods is wholly or partly deductible.'

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

'The taxable amount shall be:

...

(b) in respect of supplies referred to in Article 5(6) and (7), the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined as [at] the time of supply.'

6 Article 20(1)(b) of the Sixth Directive provides:

'The initial deduction shall be adjusted according to the procedures laid down by the Member States, in particular:

...

(b) where after the return is made some change occurs in the factors used to determine the amount to be deducted, in particular where purchases are cancelled or price reductions are obtained; however, adjustment shall not be made in cases of transactions remaining totally or partially unpaid and of destruction, loss or theft of property duly proved or confirmed, nor in the

case of applications for the purpose of making gifts of small value and giving samples specified in Article 5(6). However, Member States may require adjustment in cases of transactions remaining totally or partially unpaid and of theft.'

National legislation and case-law

7 At the material time, Paragraph 1(1)(2)(a) of the Umsatzsteuergesetz (Turnover Tax Law) 1991 provided:

'(1) The following transactions shall be subject to turnover tax:

...

2. own consumption on the national territory. Own consumption shall be deemed to occur where a trader

(a) allocates business goods for purposes other than those of the business...'

8 Unlike Article 5(6) of the Sixth Directive, which does not provide for the taxation of the allocation of goods for own consumption unless the value added tax on the

goods or the component parts thereof was wholly or partly deductible, Paragraph 1(1)(2)(a) of the Turnover Tax Law does not make the taxation of that allocation subject to such a condition.

9 However, that condition prescribed by Community law is applied by the German finance authorities on the basis of the direct effect of Article 5(6) of the Sixth Directive.

10 Thus a notice from the Federal Ministry of Finance of 13 May 1994 (BStBl. 1994, p. 298) provides that, in order to avoid taxation of goods allocated to his private use, a trader may rely on the provisions of Article 5(6) of the Sixth Directive provided that no input VAT was deductible either in respect of the goods themselves or in respect of components subsequently incorporated in the goods. In such a case the allocation will not be taxable, by way of derogation from Paragraph 1(1)(2)(a) of the Turnover Tax Law.

11 However, that notice laid down the following principles:

'If the trader was entitled to deduct VAT in respect not of the goods themselves but of the components subsequently incorporated therein, the allocation of the goods is subject to VAT under Paragraph 1(1)(2)(a) of the Turnover Tax Law... For the sake of simplicity, an allocation for own consumption need not be subject to VAT where the expenditure (without VAT) on improvements, repairs and servicing (including maintenance) for the goods allocated does not exceed 20% of the initial cost of acquisition. If such expenditure exceeds 20% of the initial cost of acquisition, it can as a rule be assumed without further investigation that components have been incorporated in the goods.'

12 On the other hand, the Bundesfinanzhof held in a judgment of 30 March 1995 (V R 65/93, BFHE 177, 541) that expenditure incurred by a taxable person for the maintenance or use of goods, where the VAT thereon had been deducted, could not affect the taxation of the allocation of the goods for private purposes, since as a general rule it did lead to the acquisition or creation of a component part of the goods within the meaning of Article 5(6) of the Sixth Directive. In that judgment the Bundesfinanzhof referred to the judgment of the Court of Justice in Case 50/88 *Kühne* [1989] ECR 1925, where the Court of Justice held that Article 6(2)(a) of the Sixth Directive did not require taxation of the allocation by a taxable person for his private use of a motor vehicle acquired second hand from a private individual where it was not possible to deduct the VAT, even where the taxable person has subsequently deducted the VAT payable on the expenditure incurred in connection with the maintenance and use of the asset.

13 The German legislation was amended by the Law of 24 March 1999 (BGBl. 1, p. 402), with effect from 1 April 1999. Paragraph 3(1)(b) of the Turnover Tax Law, as amended, provides that the allocation by a taxable person of business goods for purposes other than business purposes, the transfer free of charge of an asset by the taxable person to his staff for their private purposes and any other transfer of an asset free of charge are to be treated as a supply for consideration, with the exception of gifts of small value and samples. Their treatment as such is subject to the condition that VAT was deductible in whole or in part in respect of the asset or its component parts.

The main proceedings

Case C-322/99

14 In 1989, Mr Fischer, who traded as a second-hand car dealer, bought a Bentley motor car from a private individual. He was therefore unable to deduct VAT from

the purchase price, which was DEM 28 000. The vehicle was acquired for the purposes of Mr Fischer's taxable activities, namely to be re-sold in the course of his business.

15 In 1990, Mr Fischer restored the Bentley, having extensive bodywork repairs and respraying done. The invoice for that work, dated 14 May 1990, came to DEM 10 800, plus VAT of DEM 1 512. In the same year Mr Fischer deducted the VAT on that invoice as input VAT.

16 On 31 December 1992, Mr Fischer ceased trading and took the unsold vehicles, including the Bentley, into his private assets.

17 Mr Fischer made no VAT return for 1992. Following a special VAT investigation, the Finanzamt Burgdorf decided that the removal of the Bentley and its allocation to Mr Fischer's private assets constituted a taxable own consumption. The Finanzamt assessed the taxable amount as a proportion of the value of the vehicle, namely DEM 20 000, and fixed the VAT payable at DEM 2 800.

18 The Niedersächsische Finanzgericht, before which the matter was brought following the rejection of the complaint lodged by Mr Fischer, found in his favour. It held that, pursuant to Article 5(6) of the Sixth Directive, a vehicle purchased in circumstances in which no input VAT is deductible cannot be subject to VAT when it is transferred from the assets of the business when the business ceases to trade. The fact that Mr Fischer was able to deduct VAT in respect of the bodywork repairs and respraying amounting to DEM 10 800 after acquiring the Bentley did not alter the fact that the vehicle must be regarded as not having given rise to the right to deduct input VAT.

19 The Finanzgericht referred to *Kühne*, cited above, which established that the private use of business goods may be taxed only if the VAT on the goods themselves, and not on the expenses incurred for their use and maintenance, was deductible. It considered that the bodywork repairs and respraying which Mr Fischer had had done constituted expenditure incurred for the use and maintenance of that classic vehicle and were not 'component parts' of the goods for the purposes of Article 5(6) of the Sixth Directive.

20 The Finanzamt Burgdorf appealed to the Bundesfinanzhof on a point of law against the Finanzgericht's decision. It pleaded breach of Paragraph 1(1)(2)(a) of the Turnover Tax Law, on the taxation of allocations for own consumption, and claimed that the contested judgment should be set aside and Mr Fischer's application rejected.

21 Mr Fischer did not submit observations on the appeal on a point of law.

Case C-323/99

22 Mr Brandenstein is a self-employed tax adviser and auditor. In 1985, he purchased a vehicle for business use from a private individual for DEM 33 600 and was unable to deduct VAT. It is not disputed that from the time of purchase Mr Brandenstein used the vehicle in question solely for business purposes.

23 In 1991 he allocated the vehicle to his private assets. Up to that time Mr Brandenstein had spent a total of DEM 16 028.54 on, *inter alia*, servicing, minor

repairs, replacement tyres, the fitting of a catalytic converter in 1987 and of a new windscreen in 1991. He had deducted the input VAT on each occasion.

24 The Finanzamt Düsseldorf-Mettmann rejected Mr Brandenstein's turnover tax return and in the 1991 tax demand took the view that the allocation of the vehicle to his private assets constituted a taxable own consumption under Paragraph 1(1)(2)(a) of the Turnover Tax Law. Relying on a taxable basis of DEM 7 500, the amount which Mr Brandenstein had declared as the value of the allocation for the purposes of profits tax, the Finanzamt Düsseldorf-Mettmann assessed the amount of VAT payable as DEM 1 050.

25 In his complaint against that decision, Mr Brandenstein maintained that the allocation of business goods in respect of which no input VAT had been deductible on acquisition was not taxable as own consumption. He relied, in particular, on *Kühne*.

26 The Finanzamt Düsseldorf-Mettmann, applying the notice of 13 May 1994 from the Federal Ministry of Finance, concluded that the allocation of the vehicle by Mr Brandenstein should be taxed, since the expenditure, net of VAT, incurred in respect of improvements, repairs, servicing and maintenance had exceeded 20% of the purchase price. It therefore rejected Mr Brandenstein's complaint.

27 Mr Brandenstein appealed to the Finanzgericht Düsseldorf against that decision.

28 The Finanzgericht Düsseldorf allowed his appeal on the ground that the conditions of taxation laid down in Article 5(6) of the Sixth Directive, namely

that the VAT on the goods in question or the component parts thereof was deductible, were not satisfied in this case. The Finanzgericht held that the expenditure incurred by Mr Brandenstein in connection with the vehicle while it was being used for business purposes neither altered nor extended its potential use as determined and did not substantially increase its product value.

29 The Finanzamt Düsseldorf-Mettmann appealed to the Bundesfinanzhof on a point of law. It claimed that the Bundesfinanzhof should set aside the judgment of the Finanzgericht and reject Mr Brandenstein's application.

30 Mr Brandenstein contends that the appeal on a point of law should be dismissed.

The questions referred to the Court

31 In the orders for reference, the Bundesfinanzhof observes, apropos the first sentence of Article 5(6) of the Sixth Directive, that the Court has not yet ruled on the interpretation of the words 'where the value added tax on the goods in question or the component parts thereof was wholly or partly deductible'. It goes on to say, however, that in *Kühne* the Court held that the taxation of the private use of business goods under another provision of the Sixth Directive, Article 6(2)(a), was conditional upon the VAT on the goods themselves, and not on the expenditure incurred in respect of the maintenance and use of the goods, having been deductible.

32 The Bundesfinanzhof states that, on the basis of *Kühne*, it concluded in its judgment of 30 March 1995 that the allocation by a taxable person, for private use, of goods on which VAT was not deductible on acquisition could not be taxed in respect of the expenditure incurred for their use and maintenance in respect of

which the input VAT had been deductible, since that expenditure did not generally lead to the acquisition or creation of a component. However, the German financial administration did not follow the principles laid down in the judgment of 30 March 1995 and the interpretation of the first sentence of Article 5(6) of the Sixth Directive is therefore still subject to debate.

33 The Bundesfinanzhof further states that the question of the appropriate taxable amount will arise if, in the cases before it, the conditions laid down in the first sentence of Article 5(6) of the Sixth Directive are satisfied. Under Article 11A(1)(b) of that directive, the taxable amount in respect of supplies referred to in Article 5(6) is to be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined as at the time of supply. The Bundesfinanzhof is uncertain as to how Article 11A(1)(b) is to be interpreted where VAT was wholly or partly deductible not on the goods allocated but on some of their components.

34 The Bundesfinanzhof also observes that, on the assumption that no components within the meaning of the first sentence of Article 5(6) of the Sixth Directive have been incorporated in Mr Fischer's and Mr Brandenstein's vehicles and that that provision does not apply to the allocations at issue in the main proceedings, the question arises as to whether the input VAT deducted by Mr Fischer and Mr Brandenstein when services and goods were supplied for their vehicles is to be partly adjusted pursuant to Article 20(1)(b) of that directive.

35 The Bundesfinanzhof states in that regard that although in Case C-322/99 the allocation of the Bentley for private purposes does not entail taxation in respect of the supplies of services made after the vehicle was purchased, that allocation might constitute a change in the factors used to determine the amount to be deducted in respect of the supplies of bodywork repairs and respraying. In Case C-323/99, the Bundesfinanzhof considers that the value of the various goods Mr

Brandenstein acquired for his vehicle after purchasing it, in particular the catalytic converter and the new windscreen, still subsisted in part when the vehicle was allocated in 1991 and was not completely depreciated. It is therefore possible that the factors then used to determine the amount of input VAT to be deducted had changed within the meaning of Article 20(1)(b) of the Sixth Directive. Those goods, which have not yet wholly depreciated and which were allocated free of VAT according to the first sentence of Article 5(6) of the Sixth Directive, were no longer used for the purposes of taxable transactions within the meaning of Article 17(2) of the Sixth Directive after they had been allocated.

36 The Bundesfinanzhof therefore considered that the outcome of the cases pending before it required an interpretation of Community law and decided to stay proceedings and to refer a number of questions to the Court for a preliminary ruling.

37 In Case C-322/99, the Bundesfinanzhof has referred the following questions:

'1. Do subsequent bodywork repairs and respraying work (on which VAT was deducted) carried out on a car (on the acquisition of which VAT was not deductible) mean, on application of the car for private use,

(a) that the car must be viewed as *goods* on which VAT was *partly* deductible under Article 5(6) of the Directive, or

(b) that the subsequent expenditure is to be viewed as *component parts*, on which VAT was deductible, of the goods?

2. If Question 1 is answered in the affirmative, what are the business goods applied for private use which are to be taxed under Article 5(6) of the Directive:

(a) the car including the work carried out on it (bodywork repairs and respraying) or

(b) only the work carried out (bodywork repairs and respraying)?

3. If Question 2 is answered in the affirmative: Is the basis of assessment under Article 11A(1)(b) of the Directive therefore the purchase price of the car (or an equivalent car) together with the cost of repairs each determined as at the time of application for private use, or only the price of the repairs carried out (on which VAT was deducted)?

4. What is the relationship between Article 5(6) and Article 5(7)(c) of the Directive?

5. If the answer to Question 1 is to the effect that the subsequent (tax-deductible) work carried out (bodywork repairs and respraying) is not

subject to tax on application of the goods (car) for private use under Article 5(6) of the Directive, is the deduction of input tax on these services to be adjusted under Article 20(1)(b) of the Directive?'

38 In Case C-323/99, the Bundesfinanzhof has referred the following questions to the Court:

'1. Is [the first sentence of Article 5(6) of the Sixth Directive] applicable where, although VAT on the goods themselves was not deductible, VAT was deductible on the services or supplies which the taxable person received in respect of those goods after their acquisition?

2. What does the term "component parts" mean in the context of this provision?

3. How is the basis of assessment to be determined for an application of business assets for private use, where VAT is wholly or partly deductible, not on the goods disposed of, but on some of their components?

4. Is the deduction of input tax which a taxable person has claimed in respect of services or supplies for goods on the purchase of which VAT was not deductible to be adjusted under Article 20 of [the Sixth Directive] if the first sentence of Article 5(6) of the Directive is not applicable?'

39 By order of the President of the Court of Justice of 6 July 2000, Cases C-322/99 and C-323/99 were joined for the purposes of the oral procedure and judgment, pursuant to Article 43 of the Rules of Procedure.

Questions 1 and 2 in Cases C-322/99 and C-323/99, on the charging of VAT under Article 5(6) of the Sixth Directive

40 By Question 1 in Case C-322/99 and Questions 1 and 2 in Case C-323/99, the national court is essentially seeking to ascertain whether VAT is payable under Article 5(6) of the Sixth Directive when a taxable person allocates for purposes other than those of the business a vehicle which was purchased without VAT being deductible and which, after its acquisition, had work done to it on which VAT was deducted. Question 2 in Case C-322/99 seeks to ascertain whether, if the answer is in the affirmative, Article 5(6) is to be interpreted as meaning that the tax must be paid on the goods and their component parts or only on the components subsequently incorporated in the goods.

41 The Greek Government, which has submitted observations only in respect of Case C-322/99, argues that goods acquired by a taxable person without the input VAT being deductible and belonging to the taxable person's business must be regarded as goods on which the input VAT was partly deductible within the meaning of Article 5(6) of the Sixth Directive, where the VAT-deductible expenditure incurred on those goods increased the value of the goods. In this case, the bodywork repairs and respraying carried out on Mr Fischer's Bentley were very considerable, as may be seen from the cost compared with the price he paid for the car, and they should therefore be regarded as being added to its total

purchase price. Liability for VAT therefore arises owing to Mr Fischer's having allocated the goods in question for his personal use.

42 The German Government and the Commission submit that VAT-deductible expenditure incurred for work carried out on goods in respect of which input VAT was not deductible on acquisition may give rise to liability for VAT when the goods are allocated to purposes other than those of the business, in so far as the work in question produced 'component parts' within the meaning of Article 5(6) of the Sixth Directive. However, they differ as regards their interpretation of 'component parts'.

43 The German Government argues that the purpose of Article 5(6) of the Sixth Directive requires that 'component parts' within the meaning of that provision be taken to comprise not only independent physical goods but also supplies of services which contribute, with a sufficient degree of permanence, to maintaining or increasing the value of the goods. Tax is payable in both cases in order to prevent the taxable person from allocating to his own private assets without paying any VAT items of value the input VAT on which was deductible and from thus enjoying an undue advantage by comparison with an ordinary consumer who purchases goods of the same type. The German Government further refers to the practical difficulties in distinguishing between 'supplies of goods' and 'supplies of services', particularly in the case of repairs to motor vehicles.

44 The Commission, on the other hand, contends that 'component parts' within the meaning of Article 5(6) of the Sixth Directive can exist only where two cumulative conditions are satisfied. First, there must have been a supply of goods, in the sense that other physical goods must have been added to the business goods. A supply of services in respect of the business goods cannot therefore be regarded as a 'component part' of those goods. Second, the incorporation of other components in the goods in question must have resulted in a significant increase in the overall value of the business goods. Expenditure incurred in respect of the use and maintenance of the goods, such as expenditure on regular maintenance

work, even where it involves the replacement of used parts, does not normally lead to an increase in the value of the goods.

45 The Commission states that the first condition, namely the requirement that physical goods be supplied, follows from the general scheme and position of Article 5 of the Sixth Directive, which expressly contains only rules on the supply of physical goods. Furthermore, unlike the addition of other components which have an impact on the physical characteristics of goods, the value added by the supply of services is regularly consumed by the use to which the asset is put. Where an activity includes both an element of supply of goods and an element of supply of services, for example where repairs carried out on a motor vehicle entail the supply and fitting of replacement parts, the activity should be assessed as a whole for the purpose of determining which is the dominant element.

46 In the Commission's view, the second condition, namely the requirement of a significant increase in the value of the goods, is the consequence of the principle of the neutrality of VAT. Since, in the case of an allocation which is taxable under Article 5(6) of the Sixth Directive, in particular the allocation of goods acquired without VAT being deductible, the Commission considers that both the goods themselves and the component parts the VAT on which was deductible are subject to VAT, which would mean double taxation of the goods, 'component parts' must be given a restrictive interpretation.

47 As regards the question of the taxable amount for the purposes of Article 5(6) of the Sixth Directive, the German Government and the Commission consider that when a taxable person allocates for his private use business goods which he has purchased without being able to deduct the input VAT, but in respect of which he has deducted the VAT on the expenditure incurred for services and goods supplied after the asset was purchased, the VAT payable under Article 5(6) of the Sixth Directive is charged on the goods and the component parts taken together.

48 The German Government and the Commission submit that it is clear from Article 5(6) of the Sixth Directive that treatment as a supply made for consideration and therefore taxation concern the goods in question in their entirety and not just their component parts, since that concept is used solely in order to distinguish the right to deduct in respect of the goods allocated from the right to deduct in respect of the components of those goods.

49 The German Government and the Commission maintain that that interpretation finds support in the legislative history of Article 5(6) of the Sixth Directive.

50 In that regard, they claim that the Commission had initially proposed that the allocation be taxed in proportion to the input VAT deducted. Article 5(3)(a) of the proposal for the Sixth Directive of 29 June 1973 (*Bulletin des Communautés Européennes*, Supplement 11/73, p. 39), provided that the allocation was to be taxed only 'in so far as' the VAT on the goods in question or the component parts thereof had been wholly or partly deductible. The provision as thus proposed was not accepted by the Member States. The use of the word 'where' in Article 5(6) of the Sixth Directive, as adopted by the Council, instead of the expression 'in so far as', clearly shows in that context that the Community legislature intended that, in the interest of simplicity, the allocation should be taxed on the basis of the total value of the goods and not solely on the value of the component part of the goods in respect of which VAT had been deducted, where the input VAT on the goods themselves had not been deductible.

Findings of the Court

51 As regards, first, the question as to whether liability for VAT under Article 5(6) of the Sixth Directive arises where a taxable person allocates for purposes other than those of his business a motor vehicle purchased in circumstances in which the VAT was not deductible and which, after its acquisition, has had work done on it,

the VAT on that work having been deducted, it is necessary to interpret the following words of Article 5(6) of the Sixth Directive: 'where the value added tax on the goods in question or the component parts thereof was wholly or partly deductible'.

52 To that end, a distinction must be made between 'goods' and 'component parts thereof' within the meaning of Article 5(6) of the Sixth Directive.

53 On the one hand, the words 'the value added tax on the goods in question... was... deductible' refer only to the tax on the initial purchase or manufacture of the goods and not to the tax on expenditure subsequently incurred in respect of the goods, which is referred to in particular by the words 'the value added tax... on... the component parts thereof was... deductible'.

54 The interpretation proposed by the Greek Government cannot therefore be accepted.

55 On the other hand, the concept of 'component parts [of those goods]' referred to in Article 5(6) of the Sixth Directive, which is not defined therein, must be taken to cover both the parts already present when the goods were initially acquired and the parts subsequently incorporated in the goods.

56 In that regard, it should be noted that the purpose of Article 5(6) of the Sixth Directive is, in particular, to ensure equal treatment as between a taxable person who withdraws goods from his business and an ordinary consumer who buys goods of the same type. In pursuit of that objective, Article 5(6) prevents a taxable person who has been able to deduct VAT on the purchase of goods used for his business from escaping payment of VAT when he transfers those goods

from his business to private purposes and from thereby enjoying advantages to which he is not entitled by comparison with an ordinary consumer who buys goods and pays VAT on them (see Case C-415/98 *Bakcsi* [2001] ECR I-1831, paragraph 42, and the case-law cited there).

57 For the purpose of attaining that objective, the components already present when the goods are initially acquired and the components incorporated after acquisition cannot be treated differently. In both cases, if a taxable person has deducted the VAT on the component parts of the goods, he must, when he allocates the goods for his private use, be prevented from enjoying an advantage to which he is not entitled by comparison with an ordinary consumer.

58 The question as to whether 'component parts' may also refer to the supply of services as well as to the supply of goods was the subject of debate before the Court.

59 In that regard, it is clear from Article 5(6) of the Sixth Directive that 'component parts' refers to tangible, physical objects incorporated into the goods and cannot apply to the supply of services.

60 Such an interpretation is supported by the position of that provision in the general scheme of the Sixth Directive. Since 'goods' are defined in Article 5(1) of the Sixth Directive as tangible property, the 'component parts' of those goods within the meaning of Article 5(6) must be of the same nature. 'Supply of services' is defined in Article 6(1) of the Sixth Directive as any transaction which does not constitute a supply of goods within the meaning of Article 5 of that directive.

61 The broad interpretation of 'component parts' proposed by the German Government cannot therefore be accepted.

62 As the German Government has emphasised the difficulty in distinguishing between supplies of goods and supplies of services, particularly where work is carried out on a motor vehicle, it should be observed that there is a consistent body of case-law to the effect that in order to determine whether a given transaction is a supply of goods or a supply of services, it is necessary to identify its characteristic features (Case C-231/94 *Faaborg-Gelting Linien* [1996] ECR I-2395, paragraph 12). Where a supply of goods is only one component of a transaction in which supplies of services predominate, the transaction must be regarded as a supply of services (*Faaborg-Gelting Linien*, paragraph 14).

63 It follows that supplies of services, including those which necessitate ancillary and minor supplies of goods, cannot constitute 'component parts' within the meaning of Article 5(6) of the Sixth Directive.

64 As regards supplies of goods, it is necessary first of all, as the Advocate General observes in paragraph 72 of his Opinion, to distinguish according to whether the goods incorporated in the vehicle are or are not separable and independent by comparison with the vehicle. Thus, where such goods retain their physical and economic distinctiveness they must not be regarded as component parts of the vehicle.

65 For VAT purposes, the allocation to the private assets of a taxable person of a vehicle in which such separable and independent goods have been incorporated must be regarded as constituting two independent taxable allocations. Consequently, neither of those allocations will be subject to VAT under Article 5(6) of the Sixth Directive unless the input VAT on what was allocated was deductible.

66 Second, for reasons dictated by the principle of neutrality inherent in the scheme of the Sixth Directive, it is necessary to distinguish between supplies of goods which merely contribute to maintaining the value of the goods and which as a general rule have been consumed at the time of the allocation and those which lead to a lasting increase in the value of the goods and have not been completely consumed at the time of the allocation.

67 Where a taxable person allocates goods initially acquired from a non-taxable person without the possibility of deducting VAT, it would run counter to that principle of neutrality for that allocation to be subject to VAT where the supplies of goods after the acquisition, even though the VAT thereon was deductible, merely contributed to maintaining the goods without increasing their value and have therefore been consumed when the allocation is effected. In those circumstances, the taxable person would not enjoy any advantage to which he was not entitled by comparison with an ordinary consumer in allocating the goods without paying VAT.

68 On the other hand, it is consistent with the objective pursued by Article 5(6) of the Sixth Directive for that type of allocation to be subject to VAT where the post-acquisition supplies of goods have led to a lasting increase in the value of the goods which has not been wholly consumed at the time of the allocation.

69 The national court is of the view that that might apply, in Case C-323/99, to the catalytic converter and new windscreen fitted to Mr Brandenstein's motor vehicle in 1987 and 1991 respectively, unless they are considered to have retained their physical and economic distinctiveness. The national court considers that the value of those components remained in part when the vehicle was allocated in 1991 and had therefore not fully depreciated.

70 In the light of the foregoing considerations, it must be concluded that where a taxable person allocates for purposes other than those of the business goods in

respect of which no VAT was deductible and which, after acquisition, had VAT-deductible work done on them, VAT is payable under Article 5(6) of the Sixth Directive if the work resulted in the incorporation of 'component parts' within the meaning of that provision. Where a motor vehicle is allocated, the 'component parts' are goods supplied which have definitively lost their physical and economic distinctiveness as a result of being incorporated in the vehicle and which have given rise to a lasting increase in the value of the goods which has not been entirely consumed at the time of the allocation.

71 Furthermore, that interpretation, given in answer to the questions referred to the Court in connection with the allocation of a motor vehicle, is valid irrespective of the nature of the physical goods allocated.

72 Second, it is necessary to consider whether, when an allocation gives rise to liability for VAT in the circumstances referred to in paragraph 70 above, Article 5(6) of the Sixth Directive is to be interpreted as meaning that VAT is to be assessed on the goods and their component parts or only on the parts incorporated after the goods were purchased.

73 In paragraph 44 of *Bakcsi* the Court held that when the taxable person has been unable to deduct the VAT on the business goods purchased second-hand from a non-taxable person, the VAT on such goods must be considered not to have been deductible for the purposes of Article 5(6) of the Sixth Directive and no tax may therefore be levied under that provision when they are allocated.

74 The same applies where business goods are allocated by a taxable person for his private use and where, after the purchase of the goods acquired without input

VAT being deductible, supplies of services or supplies of goods have been made in connection with those goods and the VAT on those supplies has been deductible.

75 It would run counter to the objective of equal treatment pursued by Article 5(6) of the Sixth Directive if that provision were to be interpreted as meaning that, where goods are allocated for the private purposes of the taxable person, the goods and the parts which have been incorporated in them were to be taxed as a whole, even though no input VAT was deductible when the goods were initially acquired and only the input VAT on the 'component parts' acquired after purchase was deductible.

76 Taxation of the goods in such a situation, where the input tax was not deductible on purchase, would lead to double taxation contrary to the principle of fiscal neutrality inherent in the common system of VAT, of which the Sixth Directive forms part (see, with regard to Article 5(6) of the Sixth Directive, *Bakcsi*, paragraph 46, and with regard to heading (a) of the first subparagraph of Article 6(2) of the Sixth Directive, *Kühne*, paragraph 10, and Case C-193/91 *Mohsche* [1993] ECR I-2615, paragraph 9). Taxation of the 'component parts' as defined in paragraph 70 above ensures, moreover, that the taxable person does not enjoy any advantage to which he is not entitled by comparison with an ordinary consumer.

77 In the light of paragraphs 72 to 76 of this judgment, it must be concluded that Article 5(6) of the Sixth Directive is to interpreted as meaning that charge to tax does not arise on goods allocated by a taxable person for his private use where tax was not deductible on the goods because they were purchased from a non-taxable person, even if expenditure in respect of which input VAT was deductible has subsequently been incurred in connection with those goods. Where work on which input VAT was deductible has been carried out on the goods after they were acquired and that work resulted in the incorporation of component parts in the goods, as defined in paragraph 70 above, the VAT payable under Article 5(6) of the Sixth Directive when they are allocated will therefore apply only to those component parts.

78 The answer to Questions 1 and 2 referred by the national court in Cases C-322/99 and C-323/99 must therefore be that where a taxable person allocates for purposes other than those of the business goods (in this case a motor vehicle) on the acquisition of which VAT was not deductible and which, after being acquired, had VAT-deductible work done on them, the VAT payable under Article 5(6) of the Sixth Directive applies solely to the component parts of the goods in respect of which there was entitlement to deduct, namely the components which definitively lost their physical and economic distinctiveness when they were incorporated in the vehicle, after its purchase, following transactions involving supplies of goods which led to a lasting increase in the value of the vehicle which has not been entirely consumed at the time of the allocation.

Question 3 in Cases C-322/99 and C-323/99, on the taxable amount pursuant to Article 11A(1)(b) of the Sixth Directive

79 By Question 3 in Cases C-322/99 and C-323/99, the national court is essentially asking whether, in circumstances such as those which gave rise to the main proceedings, the taxable amount for the purposes of Article 11A(1)(b) of the Sixth Directive is to be determined by reference to the purchase price of the vehicle or a similar vehicle at the time of allocation plus the price of the repairs which resulted in 'component parts' within the meaning of Article 5(6) of that directive or whether it consists solely of the price paid for such repair work the input VAT on which was deductible.

80 The reference to the purchase price, determined at the time of allocation, may appear to be contradictory where goods are by definition acquired before they are allocated; however, it is taken from the actual wording of Article 11A(1)(b) of the Sixth Directive. It is necessary to specify that that refers to the residual value of the goods at the time of allocation.

81 The German Government submits that the taxable amount referred to in Article 11A(1)(b) of the Sixth Directive is made up of the purchase price of the vehicle or a similar vehicle and the price of the repairs, determined at the time of allocation. Since the taxable amount is calculated on prices determined at the time of allocation, it must necessarily include the expenditure incurred in maintaining the value of the goods and any increase in their value while they formed part of the assets of the business.

82 Similarly, the Commission considers that, if it follows from the assessment of the facts that 'component parts' within the meaning of Article 5(6) of the Sixth Directive were added to business goods on which no input VAT was deductible on acquisition, the taxable amount where those goods are allocated consists of the price of similar goods at the time of allocation, including the component parts which have been added to the goods.

83 The Greek Government submits that the taxable amount should be determined separately for each element. To that end, it is necessary first to determine the value of the goods at the time of allocation, then to calculate the VAT, the amount of which depends on the relationship between the expenditure in respect of which input VAT was deductible and the total price of acquisition of the goods.

Findings of the Court

84 In view of the answer given in paragraph 78 above, the answer to Question 3 in Cases C-322/99 and C-323/99 must be that in the case of an allocation which is taxable under Article 5(6) of the Sixth Directive, in particular the allocation of goods (in this case a motor vehicle)

— which were acquired without any entitlement to deduct, and

— on which work giving entitlement to deduct has been carried out, resulting in the incorporation of 'component parts' in the goods,

the taxable amount for the purposes of Article 11A(1)(b) of the Sixth Directive must be determined by reference to the price, at the time of the allocation, of the goods incorporated in the vehicle which constitute component parts of the goods allocated, within the meaning of Article 5(6) of that directive.

Question 4 in Case C-322/99, on the relationship between Article 5(6) and Article 5(7)(c) of the Sixth Directive

85 By Question 4 in Case C-322/99, the national court is seeking to ascertain the relationship between Article 5(6) and Article 5(7)(c) of the Sixth Directive.

86 Article 5(7) of the Sixth Directive provides that Member States may treat as supplies made for consideration the retention of goods by a taxable person or his successors when he ceases to carry out a taxable economic activity where the value added tax on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with Article 5(7)(a). Article 5(7)(c) thus authorises Member States to adopt a special provision for situations in which a taxable person ceases to trade.

87 As the Advocate General observes in paragraph 83 of his Opinion, it is common ground that the Federal Republic of Germany has not made use of the possibility afforded by Article 5(7)(c) of the Sixth Directive. The taxation of the allocation of goods which gave rise to the main proceedings is therefore governed exclusively by Article 5(6) of the Sixth Directive and there is no need to interpret Article 5(7)(c) thereof.

Question 5 in Case C-322/99 and Question 4 in Case C-323/99, on the adjustment of deductions pursuant to Article 20 of the Sixth Directive

88 By Question 5 in Case C-322/99 and Question 4 in Case C-323/99, the national court seeks to ascertain whether the deductions of VAT are to be adjusted pursuant to Article 20 of the Sixth Directive. It asks essentially whether, in the event that work carried out after the purchase of a vehicle, and on which input VAT was deductible, does not give rise to liability for VAT under Article 5(6) of that directive when the vehicle is allocated, the VAT deducted in respect of that work is to be adjusted pursuant to Article 20(1)(b) of that directive.

89 It should be noted that, in situations such as those which gave rise to the main proceedings, it follows from Article 20(1)(b) of the Sixth Directive that the VAT initially deducted by the taxable person must be adjusted when the goods are allocated by the taxable person for his private purposes when changes in the factors used to determine the amount to be deducted occurred after the return was made.

90 That rule apples to post-acquisition transactions on which input VAT was deducted which are excluded from the concept of 'component parts' referred to in Article 5(6) of the Sixth Directive. Those transactions are those concerning, on the one hand, post-acquisition supplies of services on which input VAT was deducted and, on the other hand, post-acquisition supplies of goods on which input was deducted, which are excluded from the concept of 'component parts' referred to in Article 5(6) of the Sixth Directive.

91 It must be noted, however, that where those supplies of services or supplies of goods subject to deductible VAT were entirely consumed in the course of the business activity before the goods were allocated, there is no change in the factors within the meaning of Article 20(1)(b) of the Sixth Directive to justify an adjustment of the deductions.

92 Accordingly, the deduction of the VAT on the expenditure incurred in connection with the work carried out on Mr Fischer's and Mr Brandenstein's vehicles must be adjusted pursuant to Article 20(1)(b) of the Sixth Directive in so far as the allocation is not subject to VAT under Article 5(6) of the Sixth Directive and the value of the work in question was not entirely consumed in the course of the taxable persons' business activities before the vehicles were allocated to their private assets.

93 It remains to determine whether, for supplies of goods in respect of which VAT was deducted and which constitute 'component parts' within the meaning of Article 5(6) of the Sixth Directive, the application of Article 20(1)(b) of that directive is necessarily precluded.

94 In that regard, it should be observed that there is nothing to preclude the application of Article 20(1)(b) of the Sixth Directive in the case of the 'component parts' referred to in Article 5(6) of that directive. Furthermore, Article 20(1)(b) expressly precludes the adjustment of the transactions referred to in Article 5(6) only in the case of allocations for the purpose of making gifts of small value and giving samples.

95 The answer to Question 5 in Case C-322/99 and to Question 4 in Case C-323/99, as reformulated in paragraph 88 above, must therefore be that where work which is carried out on goods (in this case a motor vehicle) after their purchase and on which the input VAT was deducted does not give rise to liability for VAT pursuant to Article 5(6) of the Sixth Directive when the vehicle is allocated, the VAT deducted in respect of that work must be adjusted in accordance with Article 20(1)(b) of that directive if the value of the work in question has not been entirely consumed in the context of the business activity of the taxable person before the vehicle is allocated to his private assets.

Costs

96 The costs incurred by the German and Greek Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Bundesfinanzhof by orders of 15 July 1999, hereby rules:

1. Where a taxable person allocates for purposes other than those of the business goods (in this case a motor vehicle) on the acquisition of which value added tax was not deductible and which, after being acquired, had value-added-tax-deductible work done on them, the value added tax payable under Article 5(6) 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 applies solely to the 'component parts' of the goods in respect of which there was entitlement to deduct, namely the components which definitively lost their physical and economic distinctiveness when they were incorporated in the vehicle, after its purchase, following transactions involving supplies of goods which led to a lasting increase in the value of the vehicle which has not been entirely consumed at the time of the allocation.

2. In the case of an allocation which is taxable under Article 5(6) of the Sixth Directive 77/388, in particular the allocation of goods (in this case a motor vehicle)

— which were acquired without any entitlement to deduct,

— on which work giving entitlement to deduct has been carried out, resulting in the incorporation of 'component parts' in the goods,

the taxable amount for the purposes of Article 11(A)(1)(b) of Sixth Directive 77/388 must be determined with reference to the price, at the time of the allocation, of the goods incorporated in the vehicle which constitute component parts of the goods allocated, within the meaning of Article 5(6) of that directive.

3. Where work which is carried out on goods (in this case a motor vehicle) after their purchase and on which input value added tax was deducted does not give rise to liability for value added tax pursuant to Article 5(6) of Sixth Directive 77/388 when the vehicle is allocated, the value added tax deducted in respect of that work must be adjusted in accordance with Article 20(1)(b) of that directive if the value of the work in question has not been entirely consumed in the context of the business activity of the taxable person before the vehicle is allocated to his private assets.

La Pergola Wathelet Edward

Jann Sevón

Delivered in open court in Luxembourg on 17 May 2001.

R. Grass

Registrar

A. La Pergola

President of the Fifth Chamber