JUDGMENT OF THE COURT (Sixth Chamber)
20 June 1991 *

In Case C-60/90,

Reference to the Court under Article 177 of the EEC Treaty by the Gerechtshof (Regional Court of Appeal), Arnhem, for a preliminary ruling in the proceedings pending before that court between

Polysar Investments Netherlands BV

and

Inspecteur der Invoerrechten en Accijnzen (Inspector of Customs and Excise), Arnhem,

on the interpretation of Articles 4, 13B(d)(5) and 17 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (Official Journal L 145, p. 1),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, T. F. O'Higgins, C. N. Kakouris, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: W. Van Gerven,
Registrar: J. A. Pompe, Deputy Registrar,

after considering the observations submitted on behalf of:

— Polysar BV, by N. R. Jansen, tax adviser,

* Language of the case: Dutch.

— the Netherlands Government, by B. R. Bot, Secretary General at the Ministry of Foreign Affairs, acting as Agent,

— the French Government, by Philippe Pouzoulet, Deputy Director for Legal Affairs, acting as Agent, assisted by Géraud de Bergues, Principal Deputy Secretary for Foreign Affairs, acting as Deputy Agent,

— the Commission of the European Communities, by Johannes Føns Buhl, Legal Adviser at the Commission, and Berend Jan Drijber, a member of the Commission's Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Polysar BV, the Netherlands Government, represented by T. Heukels, acting as Agent, and the Commission at the sitting on 5 March 1991,

after hearing the Opinion of the Advocate General at the sitting on 24 April 1991,

gives the following

Judgment

1 By decision of 30 January 1990, which was received at the Court on 12 March 1990, the Gerechtshof Arnhem referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions concerning the interpretation of Articles 4, 13B(d)(5) and 17 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (hereinafter 'the Sixth Directive') with a view to obtaining a definition of the terms 'taxable person' and 'right to deduct', within the meaning of that directive, with respect to holding companies.

2 Those questions arose in a dispute between Polysar Investments Netherlands BV (hereinafter referred to as 'Polysar BV'), a company incorporated under Netherlands law, and the Inspector of Customs and Excise, Arnhem, concerning an assessment to turnover tax issued to Polysar BV.

3 According to Article 4(1), (2) and (4) of the Sixth Directive:

'(1) "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

(2) The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services . . . The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

(3) . . .

(4) . . . each Member State may treat as a single taxable person persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organizational links.'

4 In accordance with Article 13B, the Member States are to exempt certain activities from value added tax, including, in particular, by virtue of subparagraph (d)(5):

'Transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities, excluding:

— documents establishing title to goods,

— the rights or securities referred to in Article 5(3).'

5 According to Article 17(3)(c) of the Sixth Directive, Member States are to grant to every taxable person the right to a deduction or refund of the value added tax in so far as the goods and services are used for the purposes of:

'any of the transactions exempted under Article 13B(a) and (d), paragraphs 1 to 5, when the customer is established outside the Community or when these transactions are directly linked with goods intended to be exported to a country outside the Community.'

6 It appears from the documents before the Court that Polysar BV forms part of the world-wide Polysar group. It holds shares in various foreign companies, receives dividends each year and regularly pays out dividends to Polysar Holding Ltd, a company incorporated in Canada which holds 100% of Polysar BV's capital. Polysar BV does not engage in trading activities. From 1 January 1981 to 31 December 1985 Polysar BV paid in respect of various services rendered to it a certain amount by way of value added tax which was subsequently refunded to it. The Inspector of Customs and Excise, Arnhem, considered that under the Sixth Directive Polysar BV was not entitled to deduct the value added tax paid and issued an assessment for the recovery of the amount refunded.

7 After unsuccessfully lodging a complaint against the notice of assessment, Polysar BV brought an action before the Gerechtshof Arnhem, which decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

'1. (a) Must a holding company whose activities are concerned solely with the holding of shares in subsidiary companies be regarded as a taxable person within the meaning of Articles 4 and 17 of the Sixth Directive on the harmonization of the laws of the Member States relating to turnover taxes?

(b) If not, is the holding company none the less a taxable person if it forms a link in and an integral part of a world-wide group of undertakings which in the main outwardly appears under a single name, the group name?

2. (a) If a holding company must be considered a taxable person, are the activities in which it engages as such transactions within the meaning of

Article 13B(d)(5) of the directive, so that they must be considered to be services exempt from turnover tax and the turnover tax charged by third parties in this regard is not deductible?

(b) If the questions raised in 2(a) are answered in the affirmative, must the answer be different if the group of undertakings to which the holding company belongs provides, in accordance with Community criteria, exclusively services which are taxable within the meaning of the Sixth Directive?'

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Question 1

9 This question is in two parts. First of all, it seeks to ascertain in substance whether a holding company whose activities are concerned solely with the holding of shares in subsidiary companies may be classified as a taxable person for purposes of value added tax within the meaning of Articles 4 and 17 of the Sixth Directive, and secondly whether that classification depends on whether the company belongs to a world-wide group which outwardly appears under a single name.

10 With regard to the first part of the question, it should be noted that Article 17 of the Sixth Directive concerns the origin and scope of the right of deduction enjoyed by a taxable person on certain conditions. The term 'taxable person' used in that provision has the meaning attributed to it by Articles 2 and 4 of the directive. Accordingly, it is necessary to interpret Articles 2 and 4.

11 It follows from Article 2 of the Sixth Directive, which defines the scope of value added tax, that within the territory of a Member State only activities of an

economic nature are subject to value added tax. By virtue of Article 4(1), 'taxable person' means any person who independently carries on such an economic activity. The expression 'economic activities' is defined in Article 4(2) as comprising all activities of producers, traders and persons supplying services, and in particular the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis.

12 According to the Court's judgment in Case C-186/89 *Van Tiem* v *Staatssecretaris van Financiën* [1990] ECR I-4363, Article 4 of the Sixth Directive confers a very wide scope on value added tax; the term 'exploitation', within the meaning of Article 4(2), refers, in accordance with the requirements of the principle that the system of value added tax should be neutral, to all transactions, whatever their legal form, by which it is sought to obtain income from the goods in question on a continuing basis.

13 It does not follow from that judgment, however, that the mere acquisition and holding of shares in a company is to be regarded as an economic activity, within the meaning of the Sixth Directive, conferring on the holder the status of a taxable person. The mere acquisition of financial holdings in other undertakings does not amount to the exploitation of property for the purpose of obtaining income therefrom on a continuing basis because any dividend yielded by that holding is merely the result of ownership of the property.

14 It is otherwise where the holding is accompanied by direct or indirect involvement in the management of the companies in which the holding has been acquired, without prejudice to the rights held by the holding company as shareholder.

15 So far as the second part of Question 1 is concerned, it should be pointed out that a holding company does not lose its status as a non-taxable person by reason of the fact that it belongs to a world-wide group, where the company confines its

activities to the mere acquisition of financial holdings. According to the second subparagraph of Article 4(4) of the Sixth Directive, persons who, while legally independent, are closely bound to one another by financial, economic and organizational links may only be treated as a single taxable person where they are established in the territory of one and the same Member State.

16 Accordingly, the fact that a holding company belongs to a world-wide group which in the main outwardly appears under a single name is not to be taken into account in classifying that company as a taxable person for the purposes of value added tax.

17 The answer to Question 1 must therefore be that Article 4 of the Sixth Directive is to be interpreted as meaning that a holding company whose sole purpose is to acquire holdings in other undertakings, without involving itself directly or indirectly in the management of those undertakings, without prejudice to its rights as a shareholder, does not have the status of a taxable person for the purposes of value added tax and therefore has no right to deduct tax under Article 17 of the Sixth Directive. The fact that the holding company belongs to a world-wide group of undertakings, which appears outwardly under a single name, is not relevant to the company's classification as a taxable person for the purposes of value added tax.

Question 2

18 In view of the answer to Question 1, Question 2 is redundant.

Costs

19 The costs incurred by the French Government, the Netherlands Government and the Commission of the European Communities, which have submitted observations

to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Gerechtshof Arnhem, by decision of 30 January 1990, hereby rules:

Article 4 of the Sixth Council Directive (77/388/EEC) of 17 May 1977, on the harmonization 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 a holding company whose sole purpose is to acquire holdings in other undertakings, without involving itself directly or indirectly in the management of those undertakings, without prejudice to its rights as shareholder, does not have the status of a taxable person for the purposes of value added tax and therefore has no right to deduct tax under Article 17 of the Sixth Directive. The fact that the holding company belongs to a world-wide group of undertakings, which appears outwardly under a single name, is not relevant to the company's classification as a taxable person for the purposes of value added tax.

Mancini O'Higgins

Kakouris Schockweiler Kapteyn

Delivered in open court in Luxembourg on 20 June 1991.

J.-G. Giraud
Registrar

G. F. Mancini
President of the Sixth Chamber