OPINION OF ADVOCATE GENERAL STIX-HACKL delivered on 1 December 2005 [1]

I — Introduction

1. In its reference for a preliminary ruling the Greek Simvoulio tis Epikratias (Council of State) asks the Court for an interpretation of Article 15 of the Sixth Council Directive on turnover taxes [2] ('the Sixth Directive') concerning the exemption of exports and like transactions and international transport with respect to the freightage for the carriage of fuel for bunkering seagoing vessels. Furthermore, if the exemption does not apply, the national court would like to know the extent to which, by virtue of the principle of protection of legitimate expectations, the conduct of the tax authorities can create a legitimate expectation on the part of the taxable person that precludes the charging of value added tax (VAT) for a past period.

1 — Original language: German.

2 — 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).

II — Legal framework

A — *Community law*

2. Article 15 of the Sixth Directive reads, in part, as follows:

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

...

4. the supply of goods for the fuelling and provisioning of vessels:

(a) used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities;

(b) used for rescue or assistance at sea, or for inshore fishing, with the exception, for the latter, of ships' provisions;

...

5. the supply, modification, repair, maintenance, chartering and hiring of the seagoing vessels referred to in paragraph 4(a) and (b) and the supply, hiring, repair and maintenance of equipment — including fishing equipment — incorporated or used therein;

...

8. the supply of services other than those referred to in paragraph 5, to meet the direct needs of the seagoing vessels referred to in that paragraph or of their cargoes;

...'

B — *National law*

3. Article 22 of Law No 1642/1986, which transposes the Sixth Directive into Greek law, in the version in force at the material time, reads in part as follows:

'(1) The following shall be exempt from tax:

(a) the supply and the import of vessels which are intended to be used in merchant shipping and in fishing by taxable persons subject to the normal VAT system or for other utilisation or for breaking up or for use by the armed forces and the State generally, the supply and the import of rescue and salvage vessels, and of objects and materials provided that they are intended to be incorporated or used in

the vessels referred to in this subparagraph. Private vessels intended for recreation or sport are excluded;

...

(c) the supply and the import of fuel, lubricants, food supplies and other goods intended for the fuelling and provisioning of the vessels and aircraft which are exempted under subparagraphs (a) and (b). The exemption shall be limited to fuel and lubricants in the case of vessels used for domestic merchant shipping or other domestic use and fishing vessels which fish in Greek territorial waters;

(d) the chartering of vessels and the hiring of aircraft, where they are intended for the further carrying out of taxable transactions or of transactions exempted with a right to deduct the input tax. The chartering or hiring of private vessels or aircraft intended for recreation or sport is excluded. The chartering of business vessels used for tourist purposes, as referred to in Law No 438/1976 (FEK (Official Gazette) 256 A') shall be exempt provided that, on their voyages, the vessels also call at ports outside Greece. The provisions of this subparagraph which relate to vessels under Law No 438/1976 shall also apply to other business vessels;

...'

III — The facts, the main proceedings and the questions referred for a preliminary ruling

4. The company Elmeka operates a company-owned tanker which it uses to carry petroleum products within Greece on behalf of various charterers/suppliers that trade in liquid fuel.

5. In the course of a fiscal audit of the company's books and documents for the years 1994, 1995 and 1996, the competent national tax authorities found that one of the charterers/suppliers was Oceanic International Bunkering SA, a company established in Panama whose business was trading in petroleum products and lubricants. The authorities also found that Elmeka had not charged the abovementioned company VAT on the gross freightage, levied each time on the basis of the bills of lading issued, for the

carriage of petroleum intended for the bunkering of vessels within Greece, on the grounds that those transactions were exempted from VAT.

6. In its letter of 21 June 1994, the applicant asked the State Financial Service for Shipping, Piraeus, whether in relation to the bunkering — with fuel from refineries located along the roadstead of the Port of Piraeus — of vessels sailing on foreign voyages it had an obligation under the law to charge VAT on the bill of lading issued to Oceanic International Bunkering, or whether it was exempted — and, if so, under what procedure — on the basis of Law No 1642/1986. By letter of 24 June 1994, the abovementioned authority replied that the bill of lading in question was exempted from VAT.

7. On the grounds that following the abolition, with effect from 1 January 1993, of the VAT exemption in respect of services for the carriage of petroleum products the services supplied by the applicant were subject to VAT because they were effected within Greece, on 5 June 1997 the competent tax authority issued, for the tax years at issue, that is from 1 January to 31 December 1994 (Case C-183/04), from 1 January to 31 December 1995 (Case C-182/04) and from 1 January to 31 December 1996 (Case C-181/04), documents requiring the applicant to pay the discrepancy, additional tax for each of the tax years concerned because of the inaccuracy of its declarations, and a fine.

8. The applicant began by challenging the measures at issue before the Diikitiko Protodikio (Administrative Court of First Instance), Piraeus, which dismissed the action. It appealed against that judgment of the court of first instance to the Diikitiko Efetio (Administrative Appeal Court), Piraeus, which partially annulled it. The Diikitiko Efetio took the view that, in principle, when conduct on the part of the administrative authorities that had manifested itself by positive actions had caused the taxable person to hold for a long time the firm conviction, justified on the basis of common experience, that he was not subject to VAT and therefore did not have to pass it on to the consumer, it was not permissible for the tax to be assessed in respect of the past period if the financial stability of the business in question was thereby put at risk. However, the applicant had not demonstrated the risk that it would be financially shaken. The Diikitiko Efetio also found that the VAT exemption concerned only the supply of fuel directly by the suppliers themselves and not carriage on behalf of the suppliers by transporters such as the applicant. Accordingly, the Diikitiko Efetio held that the applicant was lawfully obliged to pay the principal amount of tax, but not the additional tax and the fine, because it had simply followed the advice of the tax authorities.

9. The applicant applied to the Simvoulio tis Epikratias (Council of State) to have that judgment set aside. Within the context of these proceedings, the Simvoulio tis Epikratias, by order for reference of 3 March 2004, received by the Court Registry on 19 April 2004, has referred the following questions to the Court of Justice of the European Communities for a preliminary ruling:

'(1) Does Article 15(4)(a) 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, to which Article 15(5) of that directive refers, concern the chartering of both vessels used on the high seas which carry passengers for reward and vessels used for the purpose of commercial, industrial or fishing activities, or does it concern the chartering of vessels used on the high seas alone, when, in the latter case, Article 22(1)(d) of Law No 1642/1986 appears wider than the directive as regards the category of vessels to which the chartering relates?

(2) For the exemption from tax in accordance with Article 15(8) of the Sixth Directive, is the service required to be supplied to the vessel owner himself, or is the exemption granted also in respect of a service supplied to a third party, subject only to the condition that it meets the direct needs of the vessels referred to in Article 15(5), that is to say of the vessels covered by Article 15(4)(a) and (b)?

(3) Under the Community rules and principles which govern value added tax, is it permitted, and subject to what preconditions, for tax to be charged for a past period where the person liable did not pass tax on to the other contracting party during that period, and, therefore, tax was not paid to the State, because of the conviction of the person liable, brought about by conduct of the tax authorities, that he did not have to pass on tax?'

IV — The first question referred for a preliminary ruling

10. In order to determine whether the freightage in question for the carriage of fuel falls under the tax exemption provided for in paragraph 5 or 8 of Article 15 of the Sixth Directive, by its first question the referring court essentially seeks to learn whether the criterion of use 'on the high seas' mentioned

in Article 15(4)(a) of the Sixth Directive — to which the two paragraphs mentioned above refer — relates only to those vessels which carry passengers for reward or equally to the vessels mentioned in that provision as being used for the purpose of commercial, industrial or fishing activities.

A — *Main arguments of the parties*

11. The *Commission* takes the view that the provisions of Article 15(4)(a) of the Sixth Directive concern vessels only in so far as they are used on the high seas, whether it be for carrying passengers for reward, for commercial or industrial activities or for fishing. That is to say, the criteria should be applied cumulatively to all the vessels concerned.

12. The *Greek Government* shares this view.

13. The *Italian Government*, on the other hand, considers that the provisions of Article 15(4)(a) of the Sixth Directive should be so interpreted that the exemption concerns, on the one hand, vessels used on the high seas for carrying passengers for reward, and, on the other, vessels used for the purpose of commercial, industrial or fishing activities.

B — *Analysis*

14. As pointed out by the Commission in its observations, most language versions of Article 15(4)(a) of the Sixth Directive suggest that under this provision the tax exemption applies only to those vessels that are used both on the high seas and for carrying passengers for reward, for commercial or industrial activities or for fishing. Some, however, also allow for the interpretation that only vessels carrying passengers for reward also have to be used on the high seas in order to benefit from the tax exemption, so that neither a comparison of the different versions nor the interpretation of the text itself leads to an unambiguous conclusion.

15. However, the context and purpose of the provision in question [3] suggest that the 'use on the high seas' criterion relates to all the different kinds of vessels mentioned in the provision.

3 — See Case C-434/97 *Commission* v *France* [2000] ECR I-1129, paragraph 22, and Case 372/88 *Cricket St Thomas* [1990] ECR I-1345, paragraph 19.

16. First of all, it should be noted that Article 15(4)(b) of the Sixth Directive expressly provides for a tax exemption for vessels used for inshore fishing. As the Greek Government has pertinently pointed out, this provision would be superfluous if the 'use on the high seas' criterion related exclusively to passenger vessels and thus all vessels used for fishing were already exempt from VAT on the basis of Article 15(4)(a).

17. Secondly, this interpretation is confirmed by the goal and purpose of the tax exemption at issue. Thus, it is clear from the title of Article 15 ('Exemption of exports and like transactions and international transport') that the provisions of Article 15 of the Sixth Directive are generally intended to exempt from VAT supplies and services for seagoing vessels and aircraft used in international traffic. [4]

18. If the 'use on the high seas' criterion were to relate only to passenger vessels, then without it numerous vessels that never left territorial waters would qualify for exemption, including both vessels used at sea but only for purposes of cabotage or fishing in the economic zone of the Member State concerned and vessels used exclusively in domestic traffic for industrial purposes or for fishing in inland waters or rivers.

19. Furthermore, in my opinion, an interpretation according to which vessels used on the high seas were not the only vessels covered by Article 15(4)(a) would be inconsistent with the settled case-law, which calls for VAT exemptions 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. [5]

20. For these various reasons, I therefore propose that the reply to the first question referred for a preliminary ruling should be that Article 15(4)(a) of the Sixth Directive, to which Article 15(5) of the directive refers, only covers vessels used on the high seas,

4 — The Commission confirmed this in a later proposal for a more specific Community value added tax procedure applicable to the stores of vessels, aircraft and international trains: see the proposal of 23 January 1980 for a Council directive on the Community value added tax and excise duty procedure applicable to the stores of vessels, aircraft and international trains (OJ 1980 C 31, p. 10). The preamble to the proposal states that Article 15 the Sixth Directive 'contains provisions for exempting, subject to certain conditions, the supply of goods loaded as stores on board seagoing vessels and aircraft engaged in international traffic'.

5 — Case C-212/01 *Unterpertinger* [2003] ECR I-13859, paragraph 34; Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 28; Case C-2/95 *SDC* [1997] ECR I-3017, paragraph 20; and Case 348/87 *Stichting Uitvoering Financiële Acties* [1989] ECR 1737, paragraph 13.

whether for the carriage of passengers for reward, for commercial or industrial activities or for fishing.

21. In conclusion, it should also be noted that it is for the national court to verify, in the light of this reply, whether the Greek legislation meets the requirements of the Sixth Directive with respect to the category of vessels to which the chartering relates.

V — The second question referred for a preliminary ruling

22. By its second question, the referring court essentially wishes to learn whether the tax exemption provided for in Article 15(8) of the Sixth Directive presupposes that the service is supplied to the actual owner of an appropriate seagoing vessel or whether the service can also be supplied to a third party, provided that ultimately it meets the direct needs of the vessel in question.

A — *Main arguments of the parties*

23. The *Commission*, like the *Greek* and *Italian Governments*, takes the view that the service must be supplied to the vessel owner himself if it is to be exempted from VAT under Article 15(8) of the Sixth Directive.

B — *Analysis*

24. It is first necessary to recall the transaction that underlies the present case, namely, the carriage of bunkering fuel by Elmeka on behalf of the charterer/supplier Oceanic International Bunkering, which sells fuel to vessel owners. Thus, Elmeka supplies its services not directly to the vessel owner but to the charterer/supplier which delivers the fuel to the owner in a transaction that is exempt from VAT under Article 15(4)(a), provided that all the requirements for such exemption are met.

25. As the parties to the proceedings have pointed out, in the *Velker International Oil Company* case the Court ruled that the tax exemption for supplies of goods for the fuelling and provisioning of vessels under Article 15(4) is to be understood as applying only to the supply of goods to a vessel operator who will use them for fuelling and provisioning and cannot therefore be extended to the supply of those goods effected at a previous stage in the commercial chain. [6]

6 — Case C-185/89 *Velker International Oil Company* [1990] ECR I-2561, paragraphs 22 and 30.

26. In explaining its decision the Court first referred to the strict interpretation required, in particular, in the case of tax exemptions that constitute exceptions to the rule that transactions taking place 'within the territory of the country' are subject to tax. [7] It also noted that the operations mentioned in Article 15(4) are exempted from VAT because they are equated with exports, with respect to which the exemption provided for in Article 15(1) applies exclusively to the final supply of goods exported by the seller or on his behalf. [8]

27. Finally, reference should also be made to the following considerations of the Court in this judgment: 'The extension of the exemption to stages prior to the final supply of the goods to the vessel operator would require Member States to set up systems of supervision and control in order to satisfy themselves as to the ultimate use of the goods supplied free of tax. Far from bringing about administrative simplification, such systems would amount to constraints on the Member States and the traders concerned which it would be impossible to reconcile with the "correct and straightforward application of such exemptions" prescribed in the first paragraph of Article 15 of the Sixth Directive.' [9]

28. In my opinion, the considerations that underpin this judgment are also applicable to the exemption for the supply of services under Article 15(8). Moreover, there seems to be no obvious reason why in the present case, with respect to the application of VAT exemptions, a distinction should be made between the supply of goods and the supply of services — in each case to seagoing vessels.

29. Accordingly, in the light of the *Velker International Oil Company* judgment, it is my view that, by analogy with the case of the supply of goods for fuelling and provisioning seagoing vessels mentioned in Article 15(4), services to meet the direct needs of such seagoing vessels must be supplied to the vessel owner in order to fall within the tax exemption under Article 15(8).

30. I therefore propose that the reply to the second question referred for a preliminary ruling should be that for the exemption from tax in accordance with Article 15(8) of the Sixth Directive to apply, the service is required to be supplied to the vessel owner himself.

VI — The third question referred for a preliminary ruling

31. The third question essentially concerns the extent to which the rules and principles

7 — See paragraphs 19 and 20 of the judgment.
8 — See paragraphs 21 and 22 of the judgment.
9 — See paragraph 24 of the judgment.

of Community VAT law, and especially the principles of protection of legitimate expectations and legal certainty, preclude the charging of tax for a past period in the circumstances of the main proceedings.

Community rules on value added tax do not preclude the retrospective collection of VAT because the alleged expectations of the taxable person are attributable, inter alia, to information supplied, at the applicant's request, by a tax authority not legally competent to provide it.

A — *Main arguments of the parties*

32. According to the *Commission*, in the present case the settled case-law of the Court on the revocation of beneficial administrative measures and the relevant case-law on the protection of legitimate expectations and legal certainty in the context of value added tax favour the application of the principle of protection of the legitimate expectations of the taxable person. In the oral proceedings, however, the Commission added that the fact that the information concerning Elmeka's exemption from tax was not issued by the competent authority, first mentioned by the Greek Government in its written observations on the order for reference, might lead to a different conclusion.

33. The *Greek Government* argues that the applicability of the principle of protection of legitimate expectations should be decided by weighing the existence of expectations worthy of protection, on the one hand, against the principle of legality, on the other. It contends that in the present case the

34. In the view of the *Italian Government*, in the light of the case-law of the Court, especially the judgment in *Gemeente Leusden and Holin Groep*, [10] weighing the principles of legal certainty and protection of legitimate expectations, on the one hand, against the need to comply with the VAT regulations, on the other, should lead to the Member State being allowed to require the payment of the value added tax itself but not the payment of a fine or interest.

B — *Analysis*

35. First of all, it should be recalled that, basically, Community regulations are implemented in accordance with the procedural and substantive rules of national law, albeit

10 — Joined Cases C-487/01 and C-7/02 [2004] ECR I-5337.

within the limits laid down by Community law, including its general principles. [11]

36. This also applies to the assessment and collection of value added tax by national authorities. The Sixth Directive does not expressly provide for the subsequent assessment of tax, as in the present case. The referring court wishes to know whether and, if so, to what extent such assessment is permissible, especially where information supplied by the tax administration has led the taxable person to believe that the transaction is exempt from tax.

37. In this connection, it should first be noted that, in accordance with the settled case-law of the Court, the principle of protection of legitimate expectations forms part of the Community legal order and must therefore be observed both by the Community organs and by the Member States when implementing Community regulations — or rather by each of the national authorities entrusted with the application of Community law. [12]

38. From this the Court has concluded that it is to be regarded as permissible for national legislation to protect legitimate expectations and legal certainty in an area such as the recovery of wrongly paid Community aid. However, the national regulations may not go so far as to render the implementation of the Community regulations practically impossible or excessively difficult, and the national legislation must be applied without discrimination compared to purely national procedures of the same kind. Moreover, the interest of the Community must be taken fully into account. [13]

39. On the other hand, in a series of judgments, the Court has tested national measures, especially national VAT regulations, directly against the principles of protection of legitimate expectations and legal certainty. [14]

40. Thus, for example, the Court has held that the status of taxable person, once recognised, cannot, save in situations of fraud or abuse, be withdrawn from the taxpayer with retrospective effect, without

11 — Joined Cases C-80/99 to C-82/99 *Flemmer and Others* [2001] ECR I-7211, paragraph 55, and Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* [1983] ECR 2633, paragraph 17.

12 — In this respect, see, inter alia, Case 316/86 *Krücken* [1988] ECR 2213, paragraph 22; Joined Cases C-31/91 to C-44/91 *Lageder and Others* [1993] ECR I-1761, paragraph 33; Case C-381/97 *Belgocodex* [1998] I-8153, paragraph 26; and Case C-396/98 *Schloßstraße* [2000] ECR I-4279, paragraph 44.

13 — See, inter alia, Case C-24/95 *Alcan Deutschland* [1997] ECR I-1591, paragraphs 24 and 25, and *Deutsche Milchkontor and Others* (cited in footnote 11), paragraphs 30 to 32.

14 — See, inter alia, Case C-376/02 *'Goed Wonen'* [2005] ECR I-3445, paragraph 34; *Gemeente Leusden and Holin Groep* (cited in footnote 10), paragraph 69; *Schloßstraße* (cited in footnote 12), paragraph 44; and *Belgocodex* (cited in footnote 12), paragraph 26.

infringing the principles of protection of legitimate expectations and legal certainty, as that would retrospectively deprive the taxable person of the right to deduct VAT on the investment expenditure incurred. [15]

41. However, these cases were concerned with whether national regulations or their amendment could give rise to expectations worthy of protection, [16] whereas in the present case it is a question of whether and to what extent erroneous information furnished by the tax authority can give rise to such expectations.

42. In my opinion, there is, in principle, no reason why administrative conduct should not also give rise to expectations that should be protected under Community law since, in accordance with the case-law of the Court, the principle of protection of legitimate expectations must, as I have already explained, [17] be observed by every authority entrusted with the implementation of Community law. Moreover, as I have also already pointed out, [18] the Court has confirmed the permissibility, in principle, of national regulations on the protection of legitimate expectations, based on the applicability of the Community principle, in relation to aid that was wrongly paid. In aid cases the circumstances capable of giving rise to legitimate expectations are also typically determined by national administrative action.

43. On the other hand, in a series of judgments that also relate to errors or mistakes on the part of national agencies or authorities in the application of Community law, the Court has held that 'a practice of a Member State which does not conform to Community rules may never give rise to a legitimate expectation on the part of a trader who has benefited from the situation thus created'. [19]

44. However, in my view, it cannot be concluded from this case-law either that in a case such as the present there can be no expectation worthy of protection.

45. In fact, this case-law seems rather to be based on the idea that a Member State practice which infringes 'an unambiguous provision of Community law' [20] cannot ultimately lead via the principle of protection of legitimate expectations to the non-imple-

15 — Case C-400/98 *Breitsohl* [2000] ECR I-4321, paragraphs 34 to 38.

16 — See *Schloßstraße* (cited in footnote 12), paragraph 45.

17 — See point 37 above.

18 — See point 38 above.

19 — See *Lageder and Others* (cited in footnote 12), paragraph 34; Case 188/82 *Thyssen* v *Commission* [1983] ECR 3721; and Case 5/82 *Maizena* [1982] ECR 4601, paragraph 22.

20 — See, specifically, *Lageder and Others* (cited in footnote 12), paragraph 35, and *Krucken* (cited in footnote 12), paragraph 24.

mentation of the Community regulations in question. In this respect, it is also necessary to bear in mind the general interest situation in areas such as aid or export refunds or the Community's own resources, where the Member States sometimes have no natural vested interest in the correct application of the Community rules concerned. In these circumstances, a strict interpretation of the principle of protection of legitimate expectations serves to prevent Member States from effectively frustrating the full application of Community law to the trader through their own unlawful conduct.

46. The situation with respect to the collection of value added tax, which is primarily in the interests of the Member States, should, it seems to me, be rather differently appraised. In this case, there is much less risk of a Member State preventing the full implementation of Community law in favour of the trader and at the expense of the Community through its own unlawful practices. In this context, the question of the legal protection of the trader from the administrative actions of the Member State in implementing Community law assumes greater importance and it seems reasonable that a trader should be able to rely on the Community principle of protection of legitimate expectations in his dealings with the authorities of the Member State.

47. Therefore, in my view, the Sixth Directive, interpreted in the light of the principle of protection of legitimate expectations, can indeed preclude, in principle, the charging of tax for a past period if legitimate expectations have been aroused in the taxable person by incorrect information furnished by the national tax authority.

48. However, in accordance with the case-law of the Court on the principle of protection of legitimate expectations, this depends on the taxable person having acted in good faith with respect to the tax exemption. [21]

49. I believe that in the present case there are, in this respect, two aspects of special importance, namely, the discernibility of the incorrectness of the tax information and the fitness of the administrative action in itself to establish the good faith of the taxable person with respect to the exemption of his transaction from tax.

50. With regard to the discernibility of the incorrectness of the tax information, it should be noted that in relation to the protection of legitimate expectations the Court, albeit in aid law, makes heavy demands on the trader inasmuch as the

21 — See, inter alia, Case C-298/96 *Oelmühle Hamburg and Schmidt Söhne* [1998] ECR I-4767, paragraph 29, and Case C-336/00 *Huber* [2002] ECR I-7699, paragraph 59.

latter can only rely on the lawfulness of the aid granted to him if that aid was granted in accordance with the procedure provided for in Article 88 EC. Here the Court presupposes a 'diligent businessman' who should 'normally be able to determine whether the procedure has been followed'. [22] In this instance, however, the Court is referring to an aspect of the aid procedure that is, when all is said and done, relatively easily understood, whereas the present case concerns the lawfulness of a tax exemption, that is to say, a material aspect of whose correctness the undertaking in question can, in the last analysis, hardly be expected to be able to 'determine'. [23]

51. In this connection, it should also be noted that, as is apparent from the answers to the first two questions, in principle, the tax exemption at issue admits several interpretations and therefore, in my opinion, the corresponding provisions of the Sixth Directive are not so 'unambiguous' that in the present case the taxable person should not have believed in good faith in the substantive correctness of the information supplied by the tax authority.

52. With regard to the actual fitness of the administrative act as such to convince the taxable person that his transaction was exempt from tax, it is for the national court to verify whether in the specific circumstances of the present case the taxable person was justified in his belief. [24]

53. The fact, mentioned by the Greek Government in the oral proceedings, that the information came from a department of the tax administration that was not competent to provide it can be used to argue against the good faith of the taxable person only to the extent that this lack of competence ought to have been discernible by a trader exercising ordinary care, which is something for the national court to decide. In my opinion, responsibility for a mistake by the authorities with regard to the internal allocation of jurisdiction cannot automatically be passed on to the trader.

54. Moreover, prompt correction of the mistake or clarification of the lack of competence of the department providing the information on the part of the tax authority would also argue against the good faith of the taxable person.

55. I therefore propose that the third question referred for a preliminary ruling be answered as follows: the Sixth Directive, interpreted in the light of the principle of protection of legitimate expectations, pre-

22 — See, inter alia, Joined Cases C-183/02 P and C-187/02 P *Demesa and Territorio Histórico de Álava* v *Commission* [2004] ECR I-10609, paragraph 44); Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 14; and *Alcan Deutschland* (cited in footnote 13), paragraph 25.

23 — The Court also appears not to apply a uniformly strict standard of care, but to adapt itself to the specific nature of the undertaking, for example, to the 'farmer exercising ordinary care'; see, for example, *Huber* (cited in footnote 21), paragraph 58, last subparagraph; see also the Opinion of Advocate General Alber of 14 March 2002 in that case, point 119, according to which 'a farmer cannot be expected to fulfil his duty to obtain information independently in the same way as major economic undertakings under competition law'.

24 — See, for example, *Belgocodex* (cited in footnote 12), paragraph 26.

cludes the charging of tax for a past period if information supplied by the national tax authority justifies a legitimate expectation that a transaction, such as that in the main proceedings, is exempt from tax. It is for the national court, with reference to the specific circumstances of the initial case, to decide whether such a legitimate expectation is present, which presupposes that the person liable has acted in good faith. The good faith of the person liable may be called into question on grounds of the lack of competence of the department of the tax authority that provided the incorrect information only to the extent that this lack of competence, in the opinion of the national court, ought to have been discernible by a trader exercising ordinary care. A rebuttal of the good faith of the taxable person may also be based on circumstances such as the prompt correction of the mistake or clarification of the lack of competence of the department providing the information on the part of the tax authority.

VII — Costs

56. The costs incurred by the Greek and Italian Governments and by the Commission are not recoverable. 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.

VIII — Conclusion

57. In the light of the above, I propose that the questions referred for a preliminary ruling be answered as follows:

(1) Article 15(4)(a) 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 ('the Sixth

Directive'), to which Article 15(5) of the directive refers, only covers vessels used on the high seas, whether for the carriage of passengers for reward, for commercial or industrial activities or for fishing.

(2) For the exemption from tax in accordance with Article 15(8) of the Sixth Directive to apply, the service is required to be supplied to the vessel owner himself.

(3) The Sixth Directive, interpreted in the light of the principle of protection of legitimate expectations, precludes the charging of tax for a past period if information supplied by the national tax authority justifies a legitimate expectation that a transaction, such as that in the main proceedings, is exempt from tax. It is for the national court, with reference to the specific circumstances of the initial case, to decide whether such a legitimate expectation is present, which presupposes that the person liable has acted in good faith. The good faith of the person liable may be called into question on grounds of the lack of competence of the department of the tax authority that provided the incorrect information only to the extent that this lack of competence, in the opinion of the national court, ought to have been discernible by a trader exercising ordinary care. A rebuttal of the good faith of the taxable person may also be based on circumstances such as the prompt correction of the mistake or clarification of the lack of competence of the department providing the information on the part of the tax authority.