

Trans Tirreno Express SpA

v

Ufficio provinciale IVA

(reference for a preliminary ruling
from the Commissione tributaria di secondo grado, Sassari)

(Common system of value added tax — Territorial scope)

Summary

1. *Tax provisions — Harmonization of laws — Turnover taxes — Common system of value added tax — Sixth Directive — Territorial scope — Supply of services — Principle — Exceptions*
(Council Directive No 77/388/EEC, Arts 2, 3 and 9)
2. *Tax provisions — Harmonization of laws — Turnover taxes — Common system of value added tax — Sixth Directive — Territorial scope — Taxation by a Member State of transport services effected between two points within the national territory but partly outside that territory — Permissibility — Condition — No encroachment on the tax jurisdiction of other States*
(EEC Treaty, Art. 227; Council Directive No 77/388/EEC, Arts 3 and 9 (2) (b))

1. Within the general scheme of the Sixth Directive (No 77/388/EEC) on the harmonization of the laws relating to turnover taxes, Article 9, which determines the place where services are deemed to be provided for tax purposes, is intended to avoid conflicts of juris-

diction between Member States where the supply of services is covered by the laws of more than one State. Where no such conflict exists and the services supplied are purely internal and do not give rise to any conflict of jurisdiction as far as the charging of taxes is concerned,

the territorial scope of value added tax must be determined in relation to the basic rules laid down in Articles 2 and 3 which establish the principle of strict territoriality and not to the provisions of Article 9 which provide for derogations therefrom.

2. Although the territorial scope of Council Directive No 77/388 corresponds to that of the EEC Treaty as defined for each Member State in Article 227, and although the rules laid down in the directive have binding and mandatory force throughout the national territory of

the Member States, the directive, and in particular Article 9 (2) (b) thereof, in no way restricts the freedom of the Member States to extend the scope of their tax legislation beyond their normal territorial limits, so long as they do not encroach on the jurisdiction of other States. Accordingly, Article 9 (2) (b) does not prohibit a Member State from levying value added tax on a transport operation effected between two points within its national territory, even where part of the journey is completed outside its national territory, provided that it does not encroach on the tax jurisdiction of other States.

OPINION OF ADVOCATE GENERAL
SIR GORDON SLYNN
delivered on 12 December 1985

My Lords,

Trans Tirreno Express SpA carries passengers and goods by sea from the port of Livorno on the Italian mainland to the port of Olbia on the island of Sardinia, which is Italian territory and part of the Community. On 1 October 1981 the VAT office at Sassari required Trans Tirreno to pay LIT 943 479 000 in respect of VAT said to be due on the whole of the charges made for such transport during 1980. Trans Tirreno objected that this was unlawful — VAT was not due on that proportion of the charges which related to such part of the crossing, by far the greater part, as took place in international waters.

The dispute came before the Appeals Board of the Tax Commission at Sassari which stayed the proceedings and referred to this Court the question whether 'Article 9 (2) (b) of the Sixth Directive (i.e. the Sixth Council Directive of 17 May 1977, 77/388, Official Journal 1977, L 145, p. 1) makes only distances crossed within the territory of Member States in the course of international transport (from State to State) subject to VAT or whether national transport (from one point to another in the same Member State) which is carried out, as in this case, mainly by extra-territorial waters is also subject thereto'.

The Directive is described in the title as being 'on the harmonization of the laws of the Member States relating to turnover