

## Case C-280/04

**Jyske Finans A/S**

**v**

**Skatteministeriet**

(Reference for a preliminary ruling from the Vestre Landsret)

(Sixth VAT Directive — Article 13B(c) — Exemptions — Exemption of supplies of goods excluded from the right to deduct — Resale of motor cars purchased second-hand by a leasing company — Article 26a — Special arrangements for sales of second-hand goods)

Opinion of Advocate General Geelhoed delivered on 22 September 2005 . . . I - 10686

Judgment of the Court (Third Chamber), 8 December 2005 . . . . . I - 10704

### Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value-added tax — Exemptions provided for in the Sixth Directive — Exemption of supplies of goods excluded from the right to deduct — National legislation imposing tax on transactions by which a taxable person resells, after having used them for the purposes of his business, goods not excluded from the right to deduct — Whether permissible (Council Directive 77/388, Arts 13B(c), and 17(6))*

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Special arrangements for second-hand goods — Definition of taxable dealer — Undertaking which resells vehicles purchased second-hand with a view to using them in its sale and leaseback business — Included (Council Directive 77/388, Art. 26A(e))*

1. The provisions of Articles 13B(c) of Sixth Directive 77/388, as amended by Directive 94/5, relating to the exemption of supplies of goods excluded from the right to deduct by virtue of Article 17(6) of the Directive, are to be construed as meaning that they do not preclude a national law which imposes value added tax on transactions by which a taxable person, after having used them for the purposes of its business, resells goods on the acquisition of which, by virtue of Article 17(6), value added tax did not become deductible, even where that acquisition, made from taxable persons who could not declare value added tax, did not, for that reason, give rise to a right to deduct.

deductible in accordance with national legislation. The terms of that article are not capable, in that regard, of any other interpretation which would allow a taxable person, who could not take advantage of such an exemption, to avoid double taxation.

(see paras 23-24, 26, operative part 1)

Since Community law does not yet contain any provision listing the expenditure excluded from the right to deduct value added tax, the Member States may retain their existing legislation in that area until such time as the Community legislature has established a Community system of exclusions. The exemption provided for by Article 13B(c) of the Sixth Directive therefore can apply only to supplies of goods on the acquisition of which value added tax did not become

2. Article 26A(e) of Sixth Directive 77/388, as amended by Directive 94/5, relating to the special arrangements for taxing the profit margin made by the taxable dealer on the supply of second-hand goods, works of art, collector's items and antiques, is to be construed as meaning that an undertaking which, in the normal course of its business, resells cars which it had purchased second-hand with a view to using them for the purposes of its business of sale and

leaseback and for which the resale is not, at the time of the purchase of the second-hand goods, the principal objective but only its secondary objective, ancillary to that of leasing, can be considered to be a 'taxable dealer' within the meaning of that provision.

On the market for sales of second-hand cars, taxation on the overall sale price of the supply by sale and leaseback undertakings would create a distortion of competition to their detriment and in favour, in particular, of firms trading in second-hand vehicles which benefit from the taxation scheme based on the profit margin. As a means of satisfying purchasers' legitimate expectation to pay the same price for vehicles of the same quality, whether they are sold by an

undertaking trading in second-hand cars or by a sale and leaseback undertaking, the latter could not reasonably be expected to absorb in the sale price the amount of the value added tax owed by it and thereby reduce its margin. The application of the arrangements provided for in Article 26a of the Sixth Directive to sale and leaseback undertakings allows in those circumstances precisely the achievement of the aim of the Community legislature in adopting those arrangements, that is, to avoid double taxation and distortions of competition in the area of second-hand goods.

(see paras 28, 40-41, 44,  
operative part 2)