

Case C-137/02

Finanzamt Offenbach am Main-Land

v

Faxworld Vorgründungsgesellschaft Peter Hünninghausen und
Wolfgang Klein GbR

(Reference for a preliminary ruling
from the Bundesfinanzhof)

(Reference for a preliminary ruling — Interpretation of the Sixth VAT Directive — Right of a Vorgründungsgesellschaft (civil-law partnership the object of which is to prepare the means necessary for the activities of a capital company yet to be formed) to deduct input VAT — Transfer for consideration of the totality of those means upon formation of the capital company — Transfer not subject to VAT in consequence of the exercise by the Member State concerned of the option provided for in Article 5(8) of the Sixth VAT Directive)

Opinion of Advocate General Jacobs presented on 23 October 2003 I - 5549
Judgment of the Court (Fifth chamber), 29 April 2004 I - 5564

Summary of the Judgment

Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Deduction of input tax — Civil-law partnership founded for the sole purpose of setting up a capital company — Transfer of the totality of its assets to that capital company once founded — Member State not regarding such a transfer as a supply of goods — Right to deduct

(Council Directive 77/388, Arts 5(8), 6(5) and 17(2))

A partnership established for the sole purpose of founding a capital company is entitled to deduct the input tax paid on supplies of goods and services where its only output transaction in the performance of its object was to effect by formal act the transfer for consideration of the supplies obtained to that capital company once founded and where, because the Member State concerned has exercised the options provided for in Articles 5(8) and 6(5) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 95/7, a transfer of a totality of assets is not deemed to be a supply of goods or services.

Even if that partnership does not intend to effect itself taxable operations, its sole object being to prepare the activities of the capital company, the tax which it wishes to deduct relates none the less to supplies acquired for the purpose of effecting taxable transactions, even though those transactions are only the planned transactions of the capital company.

(see paras 41, 43, operative part)