JUDGMENT OF THE COURT (Sixth Chamber)
6 February 1997 *

In Case C-80/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Hoge Raad der Nederlanden for a preliminary ruling in the proceedings pending before that court between

Harnas & Helm CV

and

Staatssecretaris van Financiën

on the interpretation of Articles 4(2), 13B(d)(5) and 17(3)(c) 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 (OJ 1977 L 145, p. 1),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber (Rapporteur), C. N. Kakouris, P. J. G. Kapteyn, G. Hirsch and H. Ragnemalm, Judges,

* Language of the case: Dutch.

Advocate General: N. Fennelly,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Netherlands Government, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the French Government, by C. de Salins, Head of Subdirectorate in the Legal Directorate of the Ministry of Foreign Affairs, and G. Mignot, Foreign Affairs Secretary in the same directorate, acting as Agents, and

— the Commission of the European Communities, by B. J. Drijber, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Netherlands Government, represented by M. A. Fierstra, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent; the French Government, represented by G. Mignot; and the Commission, represented by B. J. Drijber, at the hearing on 1 October 1996,

after hearing the Opinion of the Advocate General at the sitting on 7 November 1996,

gives the following

Judgment

1 By judgment of 15 March 1995, received at the Court on 17 March 1995, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the interpretation of Articles 4(2), 13B(d)(5) and 17(3)(c) 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 (OJ 1977 L 145, p. 1, hereinafter 'the Sixth Directive'), seeking more specific guidance on the concepts of economic activity and the right to deduct within the meaning of the Sixth Directive.

2 Those questions were raised in proceedings between Harnas & Helm, a limited partnership ('Harnas'), and the Netherlands State Secretary for Finance, concerning a value added tax ('VAT') reassessment notice sent to Harnas.

3 Under Article 4(1) and (2) 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.'

4 Under Article 13B, Member States are to exempt certain activities from VAT, including:

'(d) the following transactions:

1. the granting and the negotiation of credit and the management of credit by the person granting it;

...

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 ...'.

5 Under 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 VAT 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), points 1 to 5, when the customer is established outside the Community or when those 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 Harnas, which is established in Amsterdam, held, at least from 1 January 1987 to 1 March 1991, shares and bonds issued by bodies and undertakings in the United States of America and Canada. During the relevant period, Harnas received dividends or interest on those shares and bonds.

7 In 1984, Harnas made a loan to the undertaking All American Metals, which was redeemed on 16 April 1987. On 1 July 1992, it made a loan to another borrower, Opticast International Corporation. In its tax return, Harnas deducted the VAT which it had been charged in connection with those transactions.

8 The tax inspector, considering that, as from 17 April 1987, Harnas could not be regarded as a trader within the meaning of Article 7 of the Wet op de Omzetbelasting 1968 (Netherlands Law on Turnover Tax), issued a reassessment notice to recover the amount of the VAT which Harnas had deducted in respect of the period between 17 April 1987 and 1 March 1991 inclusive, namely HFL 124 517.

9 The Gerechtshof (Regional Court of Appeal), Amsterdam, dismissed Harnas's appeal against that notice on the ground that it had not carried out any economic activity within the meaning of Article 4(2) of the Sixth Directive during the period

to which the reassessment related and could therefore not be classed as a taxable person within the meaning of Article 4(1). Nor, the Gerechtshof found, did the acquisition of bonds constitute the granting of credit within the meaning of the Sixth Directive. Whilst acknowledging that a bond issue supplied the financial needs of the debtor, the Gerechtshof considered that it created a security with rights likely to attract interest on the financial markets.

10 Harnas appealed against that decision to the Hoge Raad, which decided to stay proceedings and seek a preliminary ruling from the Court on the following questions:

'1) Are the mere acquisition of ownership in and the holding of bonds — claims embodied in marketable securities —, activities which are not subservient to any other business activity, and the receipt of income therefrom to be regarded as economic activities within the meaning of Article 4(2) of the Sixth Directive?

2) If that question has to be answered in the affirmative, should those activities be regarded as transactions, within the meaning of Article 13B(d)(1) or (5) of the Sixth Directive, which, in so far as they relate to bonds issued by a body established outside the Community, confer an entitlement to deduct the input tax imposed on the possession and management of the bonds as a result of Article 17(3)(c) of the Sixth Directive?

3) If Question 2 has to be answered in the affirmative, in the event that a taxable person carrying out the activities referred to in the foregoing questions is also the holder of shares, which, according to that which the Court of Justice held in particular in its judgment of 22 June 1993 in Case C-333/91 *Sofitam*, fall outside the scope of value added tax, can the input tax charged to that taxable person be deducted in full or is the input tax relating to the possession of the shares debarred from being deducted?

4) If Question 3 must be answered in the latter sense, according to what yardstick must the amount disqualified from deduction be calculated?'

The first question

11 By its first question, the national court essentially asks whether Article 4(2) of the Sixth Directive is to be interpreted as meaning that the mere acquisition of ownership in and the holding of bonds, activities which are not subservient to any business activity, and the receipt of income therefrom are not to be regarded as economic activities conferring on the person concerned the status of a taxable person.

12 It must first be noted that, under Article 4(2) of the Sixth Directive, economic activity includes, *inter alia*, the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis.

13 Furthermore, as the Court has repeatedly held (see Case C-186/89 *Van Tiem* v *Staatssecretaris van Financiën* [1990] ECR I-4363, paragraph 17), Article 4 of the Sixth Directive confers a very wide scope on value added tax, comprising all stages of production, distribution and the provision of services.

14 The Court has further held that, in accordance with the requirements of the principle that the common system of VAT should be neutral, the concept of 'exploitation' within the meaning of Article 4(2) refers to all transactions, whatever may be

their legal form, by which it is sought to obtain income from the property in question on a continuing basis (*Van Tiem*, paragraph 18).

15 However, the Court has also specified that the mere acquisition and holding of shares in a company is not to be regarded as an economic activity, within the meaning of the Sixth Directive, conferring on the holder the status of a taxable person (Case C-60/90 *Polysar Investments Netherlands* v *Inspecteur der Invoerrechten en Accijnzen* [1991] ECR I-3111, paragraph 13). 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 (see also, to the same effect, Case C-333/91 *Sofitam* v *Ministre Chargé du Budget* [1993] ECR I-3513, paragraph 12).

16 It is true that the transactions referred to in Article 13B(d)(5) of the Sixth Directive may fall within the scope of VAT where they are effected as part of a commercial share-dealing activity, in order to secure a direct or indirect involvement in the management of the companies in which the holding has been acquired or where they constitute the direct, permanent and necessary extension of the taxable activity (see *Polysar Investments Netherlands*, cited above, paragraph 14; Case C-155/94 *Wellcome Trust* v *Commissioners of Customs and Excise* [1996] ECR I-3013, paragraph 35; and Case C-306/94 *Régie Dauphinoise* v *Ministre du Budget* [1996] ECR I-3695, paragraph 18).

17 The French Government has submitted, however, that a distinction should be drawn between the acquisition and holding of shares, the activity in issue in the *Polysar Investments Netherlands* case, and the acquisition and holding of bonds, with which the present case is concerned.

18 In that regard, as the Netherlands Government has rightly pointed out, the activity of a bondholder may be defined as a form of investment which does not extend further than straightforward asset management. The income from the bonds

derives from the mere fact of holding them, which entitles the holder to payments of interest. Such interest cannot, therefore, be regarded as a return on an economic activity or transaction carried out by the bondholder, since it derives from the mere ownership of the bonds.

19 There is thus no reason to treat bondholding differently from shareholding. That is why Article 13B(d)(5) mentions both shares and debentures as covered by an exemption.

20 The answer to the first question must therefore be that Article 4(2) of the Sixth Directive is to be interpreted as meaning that the mere acquisition of ownership in and the holding of bonds, activities which are not subservient to any other business activity, and the receipt of income therefrom are not to be regarded as economic activities conferring on the person concerned the status of a taxable person.

21 In view of the answer given to the first question, it is no longer necessary to answer the remaining questions referred for a preliminary ruling.

Costs

22 The costs incurred by the Netherlands and French Governments and the Commission of the European Communities, which have submitted observations to the Court, 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.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Hoge Raad der Nederlanden by judgment of 15 March 1995, hereby rules:

Article 4(2) 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 is to be interpreted as meaning that the mere acquisition of ownership in and the holding of bonds, activities which are not subservient to any other business activity, and the receipt of income therefrom are not to be regarded as economic activities conferring on the person concerned the status of a taxable person.

Mancini Kakouris Kapteyn

Hirsch Ragnemalm

Delivered in open court in Luxembourg on 6 February 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber