JUDGMENT OF THE COURT (Second Chamber)
23 January 1986 *

In Case 283/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Commissione tributaria di secondo grado [Appeals Board of the Tax Commission], Sassari, for a preliminary ruling in the proceedings pending before it between

Trans Tirreno Express SpA, a company incorporated under Italian law whose registered office is at Sassari,

and

Ufficio provinciale IVA [provincial VAT office], Sassari,

on the interpretation of Article 9 (2) (b) of the Sixth Council Directive, No 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,

THE COURT (Second Chamber)

composed of: K. Bahlmann, President, O. Due and F. Schockweiler, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

Trans Tirreno Express SpA, the plaintiff in the main proceedings, by Guido Guida, Avvocato, Genoa,

the Government of the Italian Republic, by Marcello Conti, Avvocato dello Stato, at the hearing,

* Language of the Case: Italian.

the Government of the Federal Republic of Germany, by Martin Seidel, Ministerialrat at the Federal Ministry of Economic Affairs, and Ernst Röder, Regierungsdirektor at the Federal Ministry of Economic Affairs, in the written procedure, and by Jochim Sedemund, Rechtsanwalt, Cologne, at the hearing,

the Government of the French Republic, by François Renouard, Deputy Director of Legal Affairs at the Ministry of Foreign Relations, in the written procedure, and by R. Abraham, Conseiller des Tribunaux Administratifs at the Ministry of Foreign Affairs, at the hearing,

the Government of the Kingdom of Denmark, by Laurids Mikaelsen, Legal Adviser at the Ministry of Foreign Affairs, in the written procedure,

the Commission of the European Communities, by Guido Berardis, a member of its Legal Department, and

after hearing the Opinion of the Advocate General delivered at the sitting on 12 December 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 23 November 1984, which was received at the Court on 29 November 1984, the Commissione tributaria di secondo grado, Sassari, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 9 (2) (b) of the Sixth Council Directive, No 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 (Official Journal 1977, L 145, p. 1, hereinafter referred to as 'the Sixth Directive').

Background to the dispute

2 According to the information supplied by the national court, the plaintiff in the main proceedings, Trans Tirreno Express SpA, carries passengers and goods by ship between the port of Livorno, on the Italian mainland, and Olbia, in Sardinia. The Uffficio Provinciale IVA, Sassari, seeks to charge Trans Tirreno VAT in respect of the whole distance, including that part of the route which passes through international waters.

3 Trans Tirreno is unwilling to pay the proportion of the tax demanded relating to the part of the route which passes through international waters and disputes the right of the Italian State to charge tax in respect of that part of the route. In that respect it claims that Article 9 (c) of Presidential Decree No 633 of 26 October 1972 (Ordinary Supplement to Italian Official State Gazette No 292, p. 2), as amended by Presidential Decree No 94 of 31 March 1979 (Italian Official State Gazette No 93, p. 3011), which fixes the basis of assessment for VAT in respect of transport services carried out in the territory of the State 'in proportion to the distance covered therein', implements Article 9 (2) (b) of the Sixth Directive, under which, in Trans Tirreno's view, VAT may not, by virtue of the principle of territoriality, be charged on journeys which take place outside the national territory.

4 The Commissione tributaria di secondo grado, Sassari, considered that in those circumstances it needed to obtain an interpretation of Article 9 (2) (b) of the Sixth Directive in order to enable it to decide the dispute and that, moreover, it was necessary to apply the relevant Community law uniformly in all the Member States. It therefore requested the Court of Justice to give a preliminary ruling on the following question:

Does Article 9 (2) (b) of the Sixth Directive make only distances crossed within the territory of Member States in the course of international transport (from State to State) subject to VAT or is national transport (from one point to another in the same Member State) which is carried out, as in this case, mainly in extra-territorial waters also subject thereto?

Observations submitted to the Court

5 Trans Tirreno Express SpA, the Government of the French Republic, the Government of the Federal Republic of Germany and the Commission of the European Communities submitted written observations and presented oral argument. The Government of the Kingdom of Denmark submitted written observations and the Italian Republic presented oral argument.

6 According to Trans Tirreno Express SpA, it follows from a literal and strict interpretation of Article 9 (2) (b) of the Sixth Directive that that provision endorses the principle of territoriality with regard to taxation and that distances covered in international waters may not and must not be taxed.

7 The Government of the Federal Republic of Germany argues on the basis of Articles 2 and 3 of the Sixth Directive that extra-territorial waters do not form part of the 'territory of the country' within the meaning of the directive and that only the part of the voyage completed within the country is subject to VAT, even where the transport operation starts and finishes in the same Member State.

8 The Government of the French Republic maintains that the Sixth Directive requires the Member States to charge VAT on transport services only where such services are carried out within their national territory. Outside the national territory Member States are free to decide whether or not to charge VAT, as, moreover, the Court acknowledged, although in relation to a different provision, in its judgment of 4 July 1985 (Case 168/84 *Berkholz* [1985] ECR 2251).

9 The Government of the Kingdom of Denmark, for its part, takes the view that the Sixth Directive lays down no express rule on the question, but that it must be inferred from the general scheme of the directive not only that VAT may be charged on the parts of the voyage completed in international waters, but that indeed it must be charged in order to avoid abuses whereby unnecesssary detours are made through international waters for the purpose of avoiding the tax. Moreover, the Danish Government considers that for national vessels in international waters, a transport operation in international waters continues to be covered by national tax rules, since such vessels are within the jurisdiction of the State of registration.

10 The Government of the Italian Republic argued that Article 9 of the Sixth Directive was intended to resolve conflicts of jurisdiction in cases where the supply of services was governed by the laws of more than one Member State. In its view, there is no such conflict in this case and a solution should be based on Articles 2 and 3 of the Sixth Directive. Ultimately it is for each Member State to determine the territorial scope of its VAT scheme.

11 The Commission considers that Article 9 (2) (b) of the Sixth Directive applies solely to the transport of persons. Since the transport of goods is an ancillary service it is governed by other provisions. The transport of persons between two points within the same country is to be regarded as internal transport which under the directive is subject to national VAT, even in respect of the distances completed in international waters, provided that no stop is made in another State.

The reply to be given to the national court

12 In order to reply to the question referred to the Court is is necessary to consider the aim of Article 9 in relation to the general scheme of the directive.

13 The territorial scope of the directive is defined in Articles 2 and 3. According to Article 2, VAT is charged on the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such. According to Article 3, the territory of the country is the area of application of the Treaty establishing the European Economic Community as defined for each Member State in Article 227. Article 3 (2) expressly excludes certain national territories.

14 In its judgment of 4 July 1985 (*Berkholz*, cited above) the Court held that, as the seventh recital in the preamble to the directive implies, Article 9 is designed to secure the rational delimitation of the respective areas covered by national value added tax rules by determining in a uniform manner the place where services are deemed to be provided for tax purposes.

15 In order to avoid conflicts of jurisdiction in cases where the supply of services is covered by the laws of more than one Member State, Article 9 (1), by way of

derogation from the strict principle of territoriality, lays down the general rule that the service is deemed to be supplied at the place where the supplier has established his business or has a fixed establishment from which the service is supplied.

16 Article 9 (2) provides for certain derogations from that general rule for specific services where the fiction that the services are supplied at the supplier's place of business is inappropriate and it lays down other criteria defining the place at which those services are deemed to be supplied.

17 Thus, according to Article 9 (2) (b), in the case of transport services, the place of performance and, therefore, the place of supply for tax purposes is deemed to be the place where transport takes place, having regard to the distances covered. It was necessary to make that exception to the general rule laid down in Article 9 (1) because a transporter's place of business is not an appropriate reference for establishing territorial jurisdiction for tax purposes. The very nature of the performance of the specific service constituted by transport, which is liable to be effected on the territory of more than one Member State, requires a different criterion, which essentially must make it possible to determine the jurisdiction of each of the States involved for tax purposes.

18 It should be noted that a transport operation of the type in question in the case pending before the national court does not give rise to any conflict of jurisdiction as far as the charging of VAT is concerned where the ship effecting the transport plies between two points within a single Member State and where the route chosen, even if part of it is outside the national territory, does not pass through any area falling under the national sovereignty of another State.

19 In the case of such transport operations, which may be regarded as purely internal, the territorial scope of VAT must be determined in relation to the basic rules laid down in Articles 2 and 3 of the directive and not to Article 9.

20 Although, as has been stated above, the territorial scope of the Sixth Directive 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 therefore 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.

21 In reply to the question referred to the Court it must therefore be stated that Article 9 (2) (b) of the Sixth Council Directive, No 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, does not prohibit a Member State from applying its value added tax legislation to a transport operation effected between two points within its national territory, even where a part of that journey is completed outside its national territory, provided that it does not encroach on the tax jurisdiction of other States.

Costs

22 The costs incurred by the Governments of the Italian Republic, the Federal Republic of Germany, the French Republic and the Kingdom of Denmark and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in reply to the question referred to it by the Commissione tributaria di secondo grado, Sassari, by an order of 23 November 1984, hereby rules:

Article 9 (2) (b) of the Sixth Council Directive, No 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, does not

preclude a Member State from applying its value added tax legislation to a transport operation effected between two points within its national territory, even where a part of the journey is completed outside its national territory, provided that it does not encroach on the tax jurisdiction of other States.

Bahlmann Due Schockweiler

Delivered in open court in Luxembourg on 23 January 1986.

P. Heim
Registrar

K. Bahlmann
President of the Second Chamber