JUDGMENT OF THE COURT (Fourth Chamber)

28 June 2007 *(1)

(Sixth VAT Directive – Article 17(3) and (4) – Refund of VAT – Eighth VAT Directive – Refund of VAT to taxable persons not established inside the country – Articles 3(b) and 9, second paragraph – Annex B – Certificate of status as a taxable person – Legal scope – Thirteenth VAT Directive – Refund of VAT to taxable persons not established in Community territory – Article 1(1) – Concept of 'business')

In Case C-73/06,

REFERENCE for a preliminary ruling under Article 234 EC, by the Finanzgericht Köln (Germany), made by decision of 19 January 2006, received at the Court on 8 February 2006, in the proceedings

Planzer Luxembourg Sàrl

v

Bundeszentralamt für Steuern,

THE COURT (Fourth Chamber),

composed of K. Lenaerts (Rapporteur), President of Chamber, E. Juhász, R. Silva de Lapuerta, J. Malenovský and T. von Danwitz, Judges,

Advocate General: V. Trstenjak,

Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Planzer Luxembourg Sàrl, by P. Widdau, Steuerberater,

– the German Government, by M. Lumma and U. Forsthoff, acting as Agents,

– the French Government, by G. de Bergues and J.-C. Gracia, acting as Agents,

– the Italian Government, by I.M. Braguglia, acting as Agent, assisted by S. Fiorentino, avvocato dello Stato,

– the Luxembourg Government, by S. Schreiner, acting as Agent,

– the Commission of the European Communities, by D. Triantafyllou, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 19 April 2007,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 3(b) and the second paragraph of Article 9 of, and Annex B to, the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11; 'the Eighth Directive'), and also the interpretation of Article 1(1) of the Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the

harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory (OJ 1986 L 326, p. 40; the Thirteenth Directive').

2 The reference was made in a dispute between Planzer Luxembourg Sàrl, a company incorporated under Luxembourg law, and the Bundeszentralamt für Steuern (the German tax authority) concerning the latters rejection of applications for refund of value added tax ('VAT') paid by the company on fuel supplies in Germany.

Legal context

Community legislation

The Sixth Directive

3 Article 17 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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 Sixth Directive') in the version applicable at the time of the facts, provides in paragraphs (2) and (3):

'2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) [VAT] due or paid in respect of goods or services supplied or to be supplied to him by another taxable person in the territory of the country;

…

3. Member States shall also grant to every taxable person the right to a deduction or refund of the [VAT] referred to in paragraph 2 in so far as the goods and services are used for the purposes of:

(a) transactions relating to the economic activities as referred to in Article 4 (2) carried out in another country, which would be eligible for deduction of tax if they had occurred in the territory of the country;

…'

4 The conditions and detailed rules for the right to refund under Article 17(3) of the Sixth Directive vary according to whether the foreign taxpayer, the recipient of the goods or services used for the purposes of his taxable transactions, is established in another Member State or outside the European Community. The first scenario falls under the Eighth Directive and the second falls under the Thirteenth Directive.

The Eighth Directive

5 Article 1 of the Eighth Directive provides:

'For the purposes of this Directive, "a taxable person not established in the territory of the country" shall mean a person ... who ... has had in that country neither the seat of his economic activity, nor a fixed establishment from which business transactions are effected, nor, if no such seat or fixed establishment exists, his domicile or normal place of residence, and who ... has supplied no goods or services deemed to have been supplied in that country ...'

6 Article 2 of the same directive provides:

'Each Member State shall refund to any taxable person who is not established in the territory of the country but who is established in another Member State, subject to the conditions laid down

below, any [VAT] charged in respect of services or movable property supplied to him by other taxable persons …'

7 Under Article 3(b) of the Eighth Directive, a taxable person established in another Member State is required, in order to receive refund, to 'produce evidence, in the form of a certificate issued by the official authority of the State in which he is established, that he is a taxable person for the purposes of [VAT] in that State'.

8 According to Article 6 of the Eighth Directive, Member States may not, in addition to the obligations laid down by that directive, such as by Article 3 thereof, impose on taxable persons referred to in Article 2 of that directive 'any obligation ... other than the obligation to provide, in specific cases, the information necessary to determine whether the application for refund is justified'.

9 According to the second paragraph of Article 9 of the Eighth Directive, '[t]he certificates referred to in Article 3(b) ... establishing that the person concerned is a taxable person, shall be modelled on the specimens contained in Annex B.'

10 According to those specimens, the certificate that the person concerned is a taxable person must indicate, in particular, the name and forenames or company name of the applicant, the nature of that persons business, the address of that persons establishment and the VAT identification number, or, in appropriate cases, the reason why the applicant does not have such an identification number.

The Thirteenth Directive

11 Article 1 of the Thirteenth Directive provides:

'For the purposes of this Directive:

(1) A taxable person not established in the territory of the Community shall mean a taxable person as referred to in Article 4 (1) of [the Sixth Directive] who, during the period referred to in Article 3 (1) of this Directive, has had in that territory neither his business nor a fixed establishment from which business transactions are effected, nor, if no such business or fixed establishment exists, his permanent address or usual place of residence, and who, during the same period, has supplied no goods or services deemed to have been supplied in the Member State referred to in Article 2 …

...'

12 According to Article 2(1) of the Thirteenth Directive:

'Without prejudice to Articles 3 and 4, each Member State shall refund to any taxable person not established in the territory of the Community, subject to the conditions set out below, any [VAT] charged in respect of services rendered or moveable property supplied to him in the territory or the country by other taxable persons or charged in respect of the importation of goods into the country, in so far as such goods and services are used for the purposes of the transactions referred to in Article 17(3) (a) and (b) of [the Sixth Directive] …'

13 Article 3(1) of the Thirteenth Directive provides:

'The refunds referred to in Article 2(1) shall be granted upon application by the taxable person. Member States shall determine the arrangements for submitting applications, including the time limits for doing so, the period which applications should cover, the authority competent to receive them and the minimum amounts in respect of which applications may be submitted. They

shall also determine the arrangements for making refunds, including the time limits for doing so. They shall impose on the applicant such obligations as are necessary to determine whether the application is justified and to prevent fraud, in particular the obligation to provide proof that he is engaged in an economic activity in accordance with Article 4(1) of [the Sixth Directive]. The applicant must certify, in a written declaration, that, during the period prescribed, he has not carried out any transaction which does not fulfil the conditions laid down in point 1 of Article 1 of this Directive.'

14 According to Article 4 of the Thirteenth Directive:

'1. For the purposes of this Directive, eligibility for refunds shall be determined in accordance with Article 17 of [the Sixth Directive] as applied in the Member State where the refund is paid.

2. Member States may, however, provide for the exclusion of certain expenditure or make refunds subject to additional conditions.

…'

National law

15 The procedure for the refund of VAT paid in Germany by a taxable person established abroad is governed by the combined provisions of Paragraph 18(9) of the Law on Turnover Tax 1993 (Umsatzsteuergesetz 1993, BGBl. 1993 I, p. 565; 'the UstG') and Paragraph 59 of the VAT Implementing Regulation 1993 (Umsatzsteuer-Durchführungsverordnung 1993, BGBl. 1993 I, p. 600; 'the UstDV').

16 By virtue of the seventh sentence of Paragraph 18(9) of the UStG, taxable persons who are not established in Community territory are not entitled to a refund of input tax in relation to the supply of fuel.

Factual background to the dispute and the questions referred

17 The applicant in the main proceedings runs a haulage business and has its registered office in Frisange (Luxembourg). Its sole shareholder is the company Planzer Transport AG ('P AG'), which is established in Dietikon (Switzerland).

18 The applicant's directors are two employees of P AG, one of whom lives in Switzerland and the other in Italy.

19 At the applicant's registered office, a certain Henri Deltgen ('D') runs the firm of Helvetia House, from which the applicant has rented its business premises. In his capacity as representative of the sole shareholder in the applicant, D arranged for the applicant's incorporation.

20 Thirteen other companies, including three subsidiaries of Swiss haulage businesses, also have their registered offices at the same address as the applicant.

21 In April 1997 and May 1998, the applicant applied to the German tax authority for the refund of VAT which it had paid on fuel purchases in Germany. The applications were in respect of DEM 11 004.25 for 1996 and DEM 16 670.98 for 1997. Each of those applications was accompanied by a certificate issued by the Luxembourg tax authority in accordance with the specimens in Annex B to the Eighth Directive.

22 According to that certificate, the applicant is liable to VAT under a Luxembourg identification number.

23 Having been informed by the foreign department of its central information office that the applicant did not have any telephone line at the address stated in the certificate, the German tax authority took the view that the applicant had not established that the place of its management was in Luxembourg. By two decisions respectively dated 24 January 1998 and 29 October 1998, it rejected the applicant's applications for refund on the ground that the conditions for refund under Paragraph 18(9) of the UstG and Paragraph 59 of the UstDV were not fulfilled.

24 The applicant lodged objections against those decisions, producing an additional certificate according to which it was 'a commercial company within the meaning of the German/Luxembourg double taxation agreement' and was liable to 'Luxembourg direct taxation'. It argued that its two managers, D and another person also responsible for its administration and accounting, carried on their activities in Luxembourg, that five employees worked part-time as drivers at its registered office, that it had a telephone line, as was apparent from its letter heading, that goods vehicles registered in Luxembourg were used for the transport of air freight, and that invoices were drawn up at its registered office.

25 By decisions of 1 July 1999, the German tax authority dismissed those objections on the ground that the place from which the applicant's business was managed was in Switzerland rather than in Luxembourg.

26 The applicant brought an action against those dismissal decisions. By a judgment of 26 October 2001, the Finanzgericht Köln (Cologne Finance Court) upheld that action, taking the view that Luxembourg constituted the main starting-point of the transactions carried out by the applicant vis-à-vis its Swiss parent company, and that the applicant's registered office was undeniably in Luxembourg.

27 By a judgment of 22 May 2003, the Bundesfinanzhof (Federal Finance Court) annulled that judgment on the ground that the Finanzgericht Köln had wrongly assumed, on the basis of the location of its registered office, that the applicant was established in Luxembourg. Taking the view that interpretation of the concepts of establishment and place of business used in German VAT legislation were a matter of Community law, the Bundesfinanzhof identified a series of criteria which, in its view, might be relevant in that respect: identification of the applicant in its own name in the Luxembourg telephone directory; leasing of offices and conclusion of contracts in its own name; place and period of activity of any workers employed in the applicant's service; the place where invoices relating to its transactions vis-à-vis its parent company were drawn up; place of registration of goods vehicles; place where goods vehicles were parked when not in use; existence of VAT declarations in Luxembourg; issuing by the Luxembourg tax authorities of documents concerning the applicant. It then referred the case back to the Finanzgericht Köln for the latter to make the necessary factual findings.

28 In its order for reference, the Finanzgericht Köln states the following in that regard:

'1. In the years 1997 and 1998 the claimant, initially on the basis of an agreement on freight charges of 1 January 1996 and on its own letterheading, made out several invoices to P AG for freight charges which the latter then also settled by bank transfer. It also invoiced P AG in parallel for charges for the use of semi-trailers. By 26 December 1995 it had already, through its employee Robert Surber and with effect from 1 January 1996, concluded a written lease with the firm of Helvetia House – Henri Deltgen for office space at Rue de Luxembourg 23 A in Frisange. It also paid the heating costs for the premises. It could be reached on the telephone number for Helvetia House, although it was entered in the telephone book under the name of D,

and it also used that number on its letterheading. In the period from 1996 to 1998 it had also registered 7 goods vehicles with the Ministerium für Transportwesen (Ministry of Transport) in its own name and had received a corresponding operating permit from the Luxembourg Ministry for the Middle Classes and Tourism. According to the list of personnel produced by it, on the date of reference of 15 June 1998 it had been employing seven members of staff most of whom had been working for it since 1996 or had otherwise been taken on to replace former members of staff who had also been employed since 1996. The claimant had concluded corresponding written contracts of employment with them. Finally, it was also registered for turnover tax purposes with the Luxembourg tax administration's Bureau d'Imposition under no. 1995 2408 871 and had the VAT identification number LU 16487850. It also filed turnover tax returns and received turnover tax assessments. It was also registered for direct tax under tax no. 1995/2408/871.

2. The defendant's enquiries of the Luxembourg tax authority on 11 July 2002 had the following result …: the applicant had leased its premises from Helvetia House and had also had the latter render some secretarial and accounting services on its behalf. The applicant did not have any equipment or other property at the registered office, nor were its officials permanently present in Luxembourg. Nor were there any storage premises or parking spaces for goods vehicles there. However, the lorry drivers were registered in Luxembourg and the goods vehicles were also registered there. In the year 1997 the claimant declared turnover in the sum of EUR 575 129.56 in Luxembourg.

3. In the oral proceedings on 19 January 2006 the Senate also established in this context that both of the applicant's directors were present in Luxembourg either 2 to 3 days a week (Surber) or 2 to 4 days a month (Gemple). Major management decisions (such as the purchase of goods vehicles, engagement of staff) were taken there and the administration was also located there (bookkeeping, invoicing, pay administration). Operations (arrangements and organisation regarding haulage trips, contact with customers) were nevertheless carried out by P AG from Switzerland. Under those arrangements the claimant rendered the corresponding haulage services using the aforementioned goods vehicles owned by it. Services were supplied 100% to P AG and the claimant accounted to it for the services concerned from Luxembourg.

4. In answer to the question whether the applicant rendered haulage services within the territory of the country (Germany), the applicant produced certification as to the application of the zero-rating rule under the deduction procedure (Paragraph 52(4) UStDV 1993) in relation to both of the credit periods in a letter of 10 January 2006 ...'

29 Emphasising that the central question in the case before it is whether the applicant in the main proceedings is established outside Community territory, in which case it is not entitled, given the seventh sentence of Paragraph 18(9) of the UStG, to reimbursement of VAT paid on fuel purchases in Germany, the referring court shares the opinion of the Bundesfinanzhof that the concept of establishment for the purposes of that provision must be interpreted in accordance with Article 1(1) of the Thirteenth Directive. However, it has doubts as to how correctly to interpret that latter provision.

30 In its view, the first question must be as to the legal scope of the certificate produced by the applicant. Whilst accepting that that certificate provides an irrefutable presumption that the person in question is an operator subject to VAT, it nevertheless asks whether an irrefutable presumption attaches as regards the establishment of that person in the Member State of the administration which issued it (the issuing Member State).

31 If that question calls for a negative answer, it asks whether the term 'business' within the meaning of Article 1(1) of the Thirteenth Directive refers to the place where the registered office of the company is situated and where essential decisions are taken concerning its economic management (which, in this case, the court sees as being in Luxembourg) or the place from which its operational activities are carried out (which, in this case, the court sees as being in Switzerland).

32 In those circumstances, the Finanzgericht Köln decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does an undertaking's certificate according to the specimen form in Annex B to the Eighth Directive have binding effect or create an irrefutable assumption that the undertaking is established in the State issuing the certificate?

(2) If the first question should be answered in the negative:

Should the term "business" in Article 1(1) of the Thirteenth Directive be construed as meaning the place where the company has its registered office?

or should it mean the place where management decisions are taken?

or is the crucial factor the place where decisions vital to normal everyday operations are taken?'

The questions referred

The first question

33 By its first question, the referring court essentially asks whether the certificate according to the specimen form in Annex B to the Eighth Directive necessarily proves that the taxable person is established in the issuing Member State.

34 In that respect, it should be noted that the aim of the Eighth Directive is to establish detailed rules for reimbursement of VAT paid in a Member State by taxable persons established in another Member State and thus to harmonise the right to refund arising from Article 17(3) of the Sixth Directive (see, to that effect, Case C-136/99 *Monte Dei Paschi Di Siena* [2000] ECR I-6109, paragraph 20, and Case C-35/05 *Reemtsma Cigarettenfabriken* [2007] ECR I-0000, paragraph 26).

35 As is apparent from its second recital, the main aim of that directive is to avoid a taxable person established in a Member State being subjected to double taxation by reason of his having to bear the definitive burden of a tax invoiced to him in another Member State. As the Commission of the European Communities has stated, the right of a taxable person established in a Member State to obtain refund of VAT paid in another Member State, in the manner governed by the Eighth Directive, is the counterpart of such a persons right established by the Sixth Directive to deduct input VAT in his own Member State.

36 It follows from the sixth recital of the Eighth Directive that its other general objective is to combat certain forms of tax evasion or avoidance (see, to that effect, Case C-361/96 *Grandes sources d'eaux minérales françaises* [1998] ECR I-3495, paragraph 28).

37 In order to meet that double objective, the Eighth Directive gives the taxable person a right to reimbursement of the input VAT paid in a Member State in which he has neither his business, nor a fixed establishment, nor his permanent address or usual place of residence, and where he has not supplied any goods or services (see, to that effect, Case C-429/97 *Commission* v *France*

[2001] ECR I-637, paragraph 28), subject to the production to the tax authority of the Member State in which that reimbursement is applied for ('the reimbursing Member State'), of a certificate provided by the tax authority of the issuing Member State concerning the capacity of the operator seeking that reimbursement as a taxable person liable to VAT.

38 As the Commission has emphasised, the system of reimbursement established by the Eighth Directive thus rests on a mechanism of cooperation and mutual trust between the tax authorities of the Member States.

39 In that context, in order to ensure the harmonious functioning of that mechanism, the second paragraph of Article 9 of the Eighth Directive provides that the certificate of the capacity as a taxable person provided by the tax authority of the issuing Member State must comply with the specimen in Annex B to that directive. According to that specimen, the certificate must indicate, in particular, the VAT registration number and the 'address of the establishment' of the person concerned. In addition, Article 3(b) of that directive provides that that certificate is to be issued by the authority of the State in which the taxable person is established.

40 As the Italian Government and the Commission have argued, the certificate in accordance with the specimen in Annex B to the Eighth Directive thus permits the assumption that the person concerned is not only liable to VAT in the issuing Member State but is also established there in one way or another, whether by having his business there or a fixed establishment from which operations are carried out.

41 The tax authorities of the refunding Member State are in principle bound in fact and in law by the information contained in that certificate.

42 As the German, French and Italian Governments and the Commission have argued, however, given the differences which exist, as regards conditions for refund, between the system established by the Eighth Directive for taxable persons established in a Member State other than the refunding State and the system established by the Thirteenth Directive for taxable persons not established in Community territory, the issuing of a certificate in accordance with the specimen in Annex B to the Eighth Directive cannot prevent the tax authorities of the refunding Member State from seeking assurance as to the economic reality of the establishment whose address is mentioned in such a certificate.

43 It should be noted in that respect that taking account of the economic reality constitutes a fundamental criterion for applying the common system of VAT (Case C-260/95 *DFDS* [1997] ECR I-1005, paragraph 23).

44 It is, moreover, settled case-law that Community law cannot be relied on for abusive or fraudulent ends (in the area of VAT, see, for example, Case C-32/03 *Fini H* [2005] ECR I-1599, paragraph 32, and Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 68).

45 That would be the case if a taxable person were to attempt to benefit from the refund system under the conditions laid down in the Eighth Directive in circumstances where the establishment whose address is given in the certificate in accordance with the specimen in Annex B of that directive does not correspond to any economic reality in the issuing Member State and, moreover, the person concerned is not established in Community territory, with the result that he falls under not the Eighth, but the Thirteenth Directive.

46 Where, however, the tax authorities of the refunding Member State have doubts, as in the case of suspected tax evasion, for example, as to the economic reality of the establishment referred to

in that certificate, they cannot, given the presumption which attaches to that certificate, refuse the taxable person a refund without any further prior verification.

47 In such a case, as the Advocate General has pointed out in paragraph 53 of her Opinion, those authorities have the possibility, under Article 6 of the Eighth Directive, to require the taxable person to supply it with the necessary information in order to assess whether the application for refund is well founded (see, to that effect, Monte Dei Paschi Di Siena, paragraph 31), such as information enabling them in principle to assess the economic reality of the establishment referred to in the certificate of status as a taxable person.

48 As the Commission has indicated, those authorities also have at their disposal the Community instruments for cooperation and administrative assistance adopted to allow the correct assessment of VAT and counter evasion and avoidance in that area, such as the measures provided for by Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92 (OJ 2003 L 264, p. 1), and Commission Regulation (EC) No 1925/2004 of 29 October 2004 laying down detailed rules for implementing certain provisions of Council Regulation (EC) No 1798/2003 (OJ 2004 L 331, p. 13).

49 If the information obtained shows that the address given in the certificate of status as a taxable person does not correspond either to the place of business of the person concerned, or to a fixed establishment from which he carries out his operations, the tax authorities of the refunding Member State are entitled to refuse the refund applied for by that person, without prejudice to any possible legal action by the latter (see, to that effect, concerning fraud or abuse, *Fini H*, paragraphs 33 and 34; by analogy, in the context of Article 43 EC, see Case C-196/04 *Cadbury Schweppes and Cadbury Schweppes Overseas* [2006] ECR I-7995, paragraph 55).

50 In the light of the above, the answer to the first question must be that Articles 3(b) and 9, second paragraph, of the Eighth Directive must be interpreted as meaning that the certificate in accordance with the specimen in Annex B to that directive does in principle allow the presumption that the person concerned is not only subject to VAT in the Member State whose tax authorities issued it, but also that he is established in that Member State. Those provisions do not, however, imply that the tax authorities of the refunding Member State are prohibited, where they have doubts as to the economic reality of the establishment whose address is given in that certificate, from verifying that reality by having recourse to the administrative measures made available for that purpose by Community legislation on VAT.

The second question

51 By its second question, the referring court seeks an interpretation of the term ‘business’ used in Article 1(1) of the Thirteenth Directive.

52 As a preliminary point, it should be noted that, for the purposes of the Thirteenth Directive, status as a taxable person not established in Community territory supposes, in particular, that the taxable person did not, during the period referred to in Article 3(1) of that directive, exhibit any of the connecting factors identified in Article 1(1) of that directive.

53 Those connecting factors include, in particular, ‘his business’ and the existence of a ‘fixed establishment from which business transactions are effected.’

54 In accordance with well-established case-law in the area of VAT, the term fixed establishment implies a minimum degree of stability derived from the permanent presence of

both the human and technical resources necessary for the provision of given services (Case 168/84 *Berkholz* [1985] ECR 2251, paragraph 18; *DFDS*, paragraph 20; Case C-190/95 *ARO Lease* [1997] ECR I-4383, paragraph 15). It thus requires a sufficient degree of permanence and a structure adequate, in terms of human and technical resources, to supply the services in question on an independent basis (*ARO Lease*, paragraph 16).

55 Concerning transport activities in particular, that term implies, for the purposes of applying Community legislation on VAT, at least an office in which contracts may be drawn up and daily management decisions taken, and a place where the vehicles used for the said activities are stored (see, to that effect, *ARO Lease*, paragraphs 19 and 27, and Case C-390/96 *Lease Plan* [1998] ECR I-2553, paragraph 26). By contrast, registration of those vehicles in the Member State concerned is not an indicator of a fixed establishment in that Member State (see, to that effect, *Lease Plan*, paragraphs 21 and 27).

56 A fixed installation used by the undertaking only for preparatory or auxiliary activities, such as recruitment of staff or purchase of the technical means needed for carrying out the undertaking's tasks, does not constitute a fixed establishment.

57 In the case at issue in the main proceedings, as appears in paragraph 31 of this judgment, the referring court is of the opinion that, taking account of its various factual findings (see paragraph 28 of this judgment), the place from which the transport activities of the applicant in the main proceedings are actually carried out is situated in Switzerland.

58 Concerning the concept of business for the purposes of Article 1(1) of the Thirteenth Directive, it should be noted that, whilst one and the same place may be both the place of business and a fixed establishment of the undertaking concerned, the mere fact that that provision, as indeed Article 1 of the Eighth Directive, distinctly refers to the place of business on the one hand and a fixed establishment from which business transactions are effected on the other shows that, in the mind of the Community legislature, the first concept is independent in its scope from the second.

59 Thus the fact that, according to the findings of the referring court in the main proceedings, the place from which the applicant's activities are actually exercised is not situated in the issuing Member State does not preclude the possibility of the applicant having established its place of business there.

60 With regard to a company, as in the case in the main proceedings, the term business for the purposes of Article 1(1) of the Thirteenth Directive refers to the place where the essential decisions concerning the general management of that company are adopted and where the functions of its central administration are carried out.

61 Determination of a company's place of business requires a series of factors to be taken into consideration, foremost amongst which are its registered office, the place of its central administration, the place where its directors meet and the place, usually identical, where the general policy of that company is determined. Other factors, such as the place of residence of the main directors, the place where general meetings are held, the place where administrative and accounting documents are kept, and the place where the company's financial, and particularly banking, transactions mainly take place, may also need to be taken into account.

62 Thus, a fictitious presence, such as that of a 'letter box' or 'brass plate' company, cannot be described as a place of business for the purposes of Article 1(1) of the Thirteenth Directive (see,

by analogy, Case C-341/04 *Eurofood IFSC* [2006] ECR I-3813, paragraph 35, and *Cadbury Schweppes and Cadbury Schweppes Overseas*, paragraph 68).

63 In the light of the above, the answer to the second question must be that Article 1(1) of the Thirteenth Directive must be interpreted as meaning that the place of a company's business is the place where the essential decisions concerning its general management are taken and where the functions of its central administration are exercised.

Costs

64 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Article 3(b) and the second paragraph of Article 9 of the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in the territory of the country must be interpreted as meaning that the certificate in accordance with the specimen in Annex B to that directive does in principle allow the presumption that the person concerned is not only subject to VAT in the Member State whose tax authorities issued it, but also that he is established in that Member State.**

Those provisions do not, however, imply that the tax authorities of the Member State in which refund of input VAT is applied for are prohibited, where they have doubts as to the economic reality of the establishment whose address is given in that certificate, from verifying that reality by having recourse to the administrative measures made available for that purpose by Community legislation on VAT.

2. **Article 1(1) of the Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory must be interpreted as meaning that the place of a company's business is the place where the essential decisions concerning its general management are taken and where the functions of its central administration are exercised.**

[Signatures]

1* Language of the case: German.