

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 9 June 2020 — Viva Telekom Bulgaria EOOD v Direktor na Direktsia Obzhalvane i danachno-osiguritelna praktika — Sofia

(Case C-257/20)

(2020/C 279/48)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Viva Telekom Bulgaria EOOD

Defendant: Direktor na Direktsia Obzhalvane i danachno-osiguritelna praktika — Sofia

Questions referred

1. Does national legislation such as that enacted in Article 16(2), point 3, of the Zakon za korporativnoto podohodno oblagane (Bulgarian Law on Corporation Tax, 'the ZKPO') conflict with the principle of proportionality enshrined in Article 5(4) and Article 12(b) of the Treaty on European Union and the right to an effective remedy and to a fair trial enshrined in Article 47 of the Charter of Fundamental Rights of the European Union?
2. Are interest payments in accordance with Article 4(1)(d) of Directive 2003/49/EC ⁽¹⁾ profit distributions to which Article 5 of Directive 2011/96/EU ⁽²⁾ applies?
3. Does the rule laid down in Article 1(1)(b) and (3) and Article 5 of Directive 2011/96/EU apply to payments pursuant to an interest-free loan, which becomes due 60 years after the loan contract was entered into, and which is covered by Article 4(1)(d) of Directive 2003/49/EC?
4. Does national legislation such as that enacted in Article 195(1) and Article 200(2) of the ZKPO and Article 200a(1) and (5), point 4, of the ZKPO (repealed), as amended, which applied from 1 January 2011 to 1 January 2015, and Article 195(1), (6), point 3, and (11), point 4, of the ZKPO, as amended on 1 January 2015, and a taxation practice according to which unpaid interest on an interest-free 60-year loan granted on 22 November 2013 to a resident subsidiary by a parent company registered in a different Member State is subject to withholding tax conflict with Article 49 and Article 63(1) and (2) of the Treaty on the Functioning of the European Union, Article 1(1)(b) and (3) and Article 5 of Directive 2011/96/EU and Article 4(1)(d) of Directive 2003/49/EC?
5. Does national legislation such as that enacted in Article 16(1) and (2), point 3, and Article 195(1) of the ZKPO on the taxation at source of fictitious interest income on an interest-free loan granted to a resident company by a company in another Member State which is the borrower's sole shareholder conflict with Article 3(1)(h) to (j), Article 5(1)(a) and (b), Article 7(1) and Article 8 of Council Directive 2008/7/EC ⁽³⁾ of 12 February 2008 concerning indirect taxes on the raising of capital?
6. Does the transposition of Directive 2003/49/EC in Article 200(2) and Article 200a(1) and (5), point 4, of the ZKPO in 2011, that is prior to expiry of the transposition period laid down in point 3 of the section on taxation in Annex VI to the Act and the Protocol to the Treaty concerning the accession of the Republic of Bulgaria to the European Union, which sets a tax rate of 10 % rather than the maximum rate of 5 % prescribed in the Act and the Protocol to the Treaty concerning the accession of the Republic of Bulgaria to the European Union, infringe the principles of legal certainty and legitimate expectation?

⁽¹⁾ Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ 2003 L 157, p. 49, Special edition in Bulgarian: Chapter 09 Volume 002 P. 75).

⁽²⁾ Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 2011 L 345, p. 8).

⁽³⁾ OJ 2008 L 46, p. 11.