

Question referred

Does Article 26 of the Wetboek van de BTW (the Belgian VAT Code) infringe Article 11.A(1)(a) of the Sixth VAT Directive, ⁽¹⁾ now incorporated in Article 73 of Council Directive 2006/112/EC ⁽²⁾ of 28 November 2006 on the common system of value added tax, and the principle of the neutrality of VAT, if that provision is interpreted as meaning that VAT is due on costs or amounts which could contractually be charged to the other contracting party but which are not so charged?

⁽¹⁾ 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).

⁽²⁾ OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from Upper Tribunal (Immigration and Asylum Chamber) London (United Kingdom) made on 22 February 2011 — Secretary of State for the Home Department v Muhammad Sazzadur Rahman, Fazly Rabby Islam, Mohibullah Rahman

(Case C-83/11)

(2011/C 145/12)

Language of the case: English

Referring court

Upper Tribunal (Immigration and Asylum Chamber) London

Parties to the main proceedings

Applicant: Secretary of State for the Home Department

Defendants: Muhammad Sazzadur Rahman, Fazly Rabby Islam, Mohibullah Rahman

Questions referred

- Does Article 3(2) of Directive 2004/38/EC ⁽¹⁾ require a Member State to make legislative provision to facilitate entry to and or residence in a Member state to the class of other family members who are not nationals of the European Union who can meet the requirements of Article 10(2)?
- Can such other family member referred to in Question 1 rely on the direct applicability of Article 3(2) of Directive 2004/38/EC in the event that he cannot comply with any requirements imposed by national legislative provisions?

3. Is the class of other family members referred to in Article 3(2) and Article 10(2) of Directive 2004/38/EC limited to those who have resided in the same country as the Union national and his or her spouse, before the Union national came to the host state?

4. Must any dependency referred to in Article 3(2) of Directive 2004/38/EC on which the other family member relies to secure entry to the host state be dependency that existed shortly before the Union citizen moved to the host state?

5. Can a Member State impose particular requirements as to the nature or duration of dependency referred to in Article 3(2) of Directive 2004/38/EC by such other family member so as to prevent such dependency being contrived or unnecessary to enable a non national to be admitted to or continue to reside in its territory?

6. Must the dependency on which the other family member relies in order to be admitted to the Member state continue for a period or indefinitely in the host state for a residence card to be issued or renewed pursuant to Article 10 of Directive 2004/38/EC and if so how should such dependency be demonstrated?

⁽¹⁾ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, p. 77)

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 24 February 2011 — Marja-Liisa Susisalo, Olli Tuomaala, Merja Ritala

(Case C-84/11)

(2011/C 145/13)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicants: Marja-Liisa Susisalo, Olli Tuomaala, Merja Ritala