



Judgment of the Court (Fourth Chamber) of 5 September 2024 (request for a preliminary ruling from the rechtbank Gelderland – Netherlands) – X and Others v Inspecteur van de Belastingdienst Utrecht and Others

(Joined Cases C-639/22 to C-644/22, (i) Inspecteur van de Belastingdienst Utrecht)

(References for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Exemptions – Article 135(1)(g) – Management of special investment funds – Definition – Pension funds – Comparability with an undertaking for collective investment in transferable securities (UCITS) – Investment risk borne by the members – Scope – Need for comparison with a pension fund regarded by the Member State concerned as a special investment fund)

(C/2024/6056)

Language of the case: Dutch

Referring court

Rechtbank Gelderland

Parties to the main proceedings

Applicants: X (C-639/22), Stichting BPL Pensioen (C-643/22), Stichting Bedrijfstakpensioensfonds voor het levensmiddelembedrijf (BPFL) (C-644/22), Fiscale Eenheid Achmea BV (C-640/22), Y (C-641/22), Stichting Pensioenfonds voor Fysiotherapeuten (C-642/22)

Defendants: Inspecteur van de Belastingdienst Utrecht (C-639/22, C-643/22 and C-644/22), Inspecteur van de Belastingdienst Amsterdam (C-640/22 and C-641/22), Inspecteur van de Belastingdienst Maastricht (C-642/22)

Operative part of the judgment

- 1) Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the members of a pension fund performing, under a collective pension scheme, a pension agreement providing for pension entitlements and retirement benefits, the amount of which – albeit based on a standard pension or occupational income and the number of years of employment of each member – may vary under certain conditions as a result of the investments made by that pension fund, may be regarded as bearing the investment risk only where that amount depends primarily on the performance of those investments. For the purposes of that assessment, the number of years during which the pension entitlement of a member has accrued or the fact that the accrual of pension entitlements was interrupted at a certain point in time as far as a pension fund was concerned are irrelevant. The fact that the risk is borne individually or collectively, in the event of, *inter alia*, bankruptcy, or that an employer acted as a guarantor during a certain period of time for the targeted pension accrual, are relevant factors, without being decisive *per se*.
- 2) Article 135(1)(g) of Directive 2006/112, read in the light of the principle of fiscal neutrality, must be interpreted as meaning that, in order to determine whether a pension fund that is not an undertaking for collective investment in transferable securities may benefit from the exemption provided for under that provision, it is necessary not only to carry out a comparison with such an undertaking but also to assess whether, in the light of the legal and financial situation of the member in relation to the pension fund, that pension fund is comparable to other funds which, without being undertakings for collective investment in transferable securities, are regarded by the Member State concerned as being special investment funds for the purposes of that provision.

(i) OJ C 35, 30.1.2023.