2. If so, must Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, in particular Article 4(1) thereof, then be construed as obliging this Member State to make the distribution of profits which a company of this Member State receives from its subsidiary of another Member State deductible in full from the amount of profits made in the taxable period and to make any resulting loss transferable to a later taxable period?

3. If the aforementioned Directive 90/435/EEC must be construed as meaning that the Belgian rule is contrary to Article 4(1) with regard to distributed profits received by the Belgian parent company from a subsidiary established in the EU, must it then be determined that the aforementioned provision of the Directive is also incompatible with the application of the Belgian rule to distributed profits received by a Belgian parent company from a Belgian subsidiary where, as in the present case, the Belgian legislature, in transposing the Directive into Belgian law, has chosen to apply the same treatment to purely internal situations and to those governed by the Directive and has therefore aligned the Belgian legislation with the Directive also for purely internal situations?

4. Does Article 43 EC preclude the application of a legislative rule of a Member State under which, for the purposes of assessment to corporation tax, the exemption of the distributed profits received during a taxable period by a company from its subsidiary established in another Member State is limited in the first Member State to the amount of the profit made in the taxable period during which the profits were distributed (after certain statutorily defined deductions), whereas a full exemption of the distributed profits would be possible if that company had set up a permanent establishment in that other Member State?

([1]) OJ L 225, p. 6.

Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 16 November 2007 — K-1 sp. z o.o. v Dyrektor Izby Skarbowej w Bydgoszczy

(Case C-502/07)

(2008/C 22/55)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: K-1 sp. z o.o.

Defendant: Dyrektor Izby Skarbowej w Bydgoszczy

Questions referred

1. Do the first and second paragraphs of Article 2 of First Council Directive 67/227/EEC ([1]) of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, in conjunction with Articles 2, 10(1)(a) and 10(2) of Sixth Council Directive 77/388/EEC ([2]) 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, rule out the possibility of imposing an obligation on a taxable person for the purpose of tax on goods and services to pay an additional tax liability within the terms of Article 109(5) and (6) of the Ustawa o Podatku od Towarów i Usług (Law on the tax on goods and services) of 11 March 2004 (Dz. U. No 54, pos 535 with amendments) in the event that it is established that the taxable person for the purpose of tax on goods and services indicated in the tax declaration submitted an amount of the tax difference to be repaid or the input tax to be repaid which is greater than the amount due?

2. Can 'special measures' within the terms of Article 27(1) 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, consist, having regard to their character and purpose, in the possibility of imposing on a taxable person for the purpose of tax on goods and services an additional tax liability fixed by a decision of the tax authority where it is established that the taxable person has declared an overstated amount of the tax difference to be repaid or an overstated amount of input tax to be repaid?

3. Does the power provided for by Article 33 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, encompass the right to introduce the additional tax liability laid down in Article 109(5) and (6) of the Ustawa o Podatku od Towarów i Usług of 11 March 2004 (Dz. U. No 54, pos 535 with amendments)?

([1]) OJ, English Special Edition 1967, p. 14.
([2]) OJ 1977 L 145, p. 1.