

# Joined Cases C-497/09, C-499/09, C-501/09 and C-502/09

## Finanzamt Burgdorf and Others

v

## Manfred Bog and Others

(References for a preliminary  
ruling from the Bundesfinanzhof)

(Taxation — VAT — Sixth Directive 77/388/EEC — Articles 5 and 6 —  
Classification of a commercial activity as a “supply of goods” or a “supply of  
services” — Supply of food or meals for immediate consumption from snack stalls  
or mobile snack bars — Supply in a cinema of popcorn and tortilla chips (nachos)  
for immediate consumption — Party catering service — Annex H, category 1 —  
Interpretation of the term “foodstuffs”)

Judgment of the Court (Third Chamber), 10 March 2011 . . . . . I - 1460

### Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Supply of goods*  
(Council Directive 77/388, Art. 5)

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Supply of services*  
(Council Directive 77/388, Art. 6)
3. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Member States' right to apply a reduced rate to certain supplies of goods and services*  
(Council Directive 77/388, Art. 12(3)(a), and Annex H)

1. Article 5 of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 92/111, must be interpreted as meaning that the supply of food or meals freshly prepared for immediate consumption from snack stalls or mobile snack bars or in cinema foyers is a supply of goods within the meaning of Article 5 if a qualitative examination of the entire transaction shows that the elements of supply of services preceding and accompanying the supply of the food are not predominant.

generally foreseeable, it does not constitute the predominant element of the transaction in question, and cannot in itself characterise that transaction as a supply of services.

The mere presence of furniture in cinema foyers intended, not exclusively, possibly to facilitate the consumption of such food cannot be regarded as an element of supply of services such as to bestow on the transaction as a whole the quality of a supply of services.

Since the preparation of the hot end product in snack stalls or mobile snack bars is limited essentially to basic standard actions, which for the most part are done not in response to an order from a particular customer but in continuous or regular fashion according to the demand

(see paras 68, 73, 81, operative part 1)

2. Article 6 of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 92/111, must be interpreted as meaning that, except in cases in which a party catering service does no more than deliver standard meals without any additional elements of supply of services, or in which other special circumstances show that the supply of the food represents the predominant element of a transaction, the activities of a party catering service are supplies of services within the meaning of Article 6.
3. In accordance with Article 12(3)(a) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 92/111, the reduced rates of value added tax may be applied only to the supplies of goods and services listed in Annex H to the directive.

Unlike food supplied from snack stalls and mobile snack bars and in cinemas, the food delivered by a party catering service is not as a rule the result of mere standardised preparation but contains a distinctly greater aspect of the supply of services and requires more work and greater skill.

In cases of the supply of goods, the term 'foodstuffs' in category 1 of Annex H to the Sixth Directive must be interpreted as also covering food and meals which have been prepared for immediate consumption by boiling, grilling, roasting, baking or other means. The provision refers to foodstuffs in general and makes no distinction or restriction whatever according to the kind of business, method of selling, packaging, preparation or temperature.

(see paras 77, 81, operative part 1)

(see paras 84-85, 88, operative part 2)