

Judgment of the Court (Second Chamber) of 15 September 2011 (references for a preliminary ruling from the Naczelny Sąd Administracyjny — Republic of Poland) — Jarosław Słaby v Minister Finansów

(Joined Cases C-180/10 and C-181/10) ⁽¹⁾

(Taxation — Value added tax — Directive 2006/112/EC — Meaning of taxable person — Sale of building land — Articles 9, 12 and 16 — No deduction of input VAT)

(2011/C 319/12)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Jarosław Słaby

Defendant: Minister Finansów

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) and Article 4(1) and (2) of 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) — Sale of several plots of building land — Whether the seller is a taxable person if the land forms part of the seller's agricultural activity and he ceases that activity following the reclassification of his land by the municipality as building land

Operative part of the judgment

The supply of land designated for development must be regarded as subject to value added tax under the national legislation of a Member State if that State has availed itself of the option provided for by Article 12(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2006/138/EC of 19 December 2006, irrespective of whether the transaction is carried out on a continuing basis or whether the person who effected the supply carries out an activity of a producer, a trader or a person supplying services, to the extent that that transaction does not constitute the mere exercise of the right of ownership by its holder.

A natural person who carried out an agricultural activity on land that was reclassified, following a change to urban management plans which

occurred for reasons beyond his control, as land designated for development must not be regarded as a taxable person for value added tax for the purposes of Articles 9(1) and 12(1) of Directive 2006/112, as amended by Directive 2006/138, when he begins to sell that land if those sales fall within the scope of the management of the private property of that person.

If, on the other hand, that person takes active steps, for the purpose of concluding those sales, to market property by mobilising resources similar to those deployed by a producer, a trader or a person supplying services within the meaning of the second subparagraph of Article 9(1) of Directive 2006/112, as amended by Directive 2006/138, that person must be regarded as carrying out an 'economic activity' within the meaning of that article and must, therefore, be regarded as a taxable person for value added tax.

The fact that that person is a 'flat-rate farmer' within the meaning of Article 295(1)(3) of Directive 2006/112, as amended by Directive 2006/138, is irrelevant in this respect.

⁽¹⁾ OJ C 179, 3.7.2010.

Judgment of the Court (First Chamber) of 15 September 2011 (reference for a preliminary ruling from the Tribunal Supremo (Spain)) — Unió de Pagesos de Catalunya v Administración del Estado

(Case C-197/10) ⁽¹⁾

(Common agricultural policy — Regulation (EC) No 1782/2003 — Single payment scheme — Entitlements to payments from the national reserve — Conditions for granting — Farmers commencing an agricultural activity — Hypothetical nature of the question referred — Inadmissibility)

(2011/C 319/13)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Unió de Pagesos de Catalunya

Defendant: Administración del Estado

Intervening party: Coordinadora de Organizaciones de Agricultores y Ganaderos — Iniciativa Rural del Estado Español

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 42(3) of Council Regulation No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1) and of Article 22 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development EAFRD (OJ 2005 L 277, p. 1) — Integrated administration and control system for certain support schemes — Single payment scheme — Fixing of the reference amount — Entitlement to the payment not granted in certain situations — Young farmers

Operative part of the judgment

The reference for a preliminary ruling made by the Tribunal Supremo (Spain) by decision of 18 March 2010 is inadmissible because the question referred is hypothetical.

⁽¹⁾ OJ C 195, 17.7.2010.

Judgment of the Court (Fourth Chamber) of 15 September 2011 (reference for a preliminary ruling from the Finanzgericht Baden-Württemberg, Germany) — Cathy Schulz-Delzers, Pascal Schulz v Finanzamt Stuttgart III

(Case C-240/10) ⁽¹⁾

(Free movement of persons — Non-discrimination and citizenship of the Union — Income tax — Taking into account expatriation allowances in calculating a tax rate applicable to other revenue applying a progressive tax scale — Taking into account allowances granted to civil servants of another Member State exercising their functions on national territory — Disregarding allowances granted to national civil servants exercising their functions outside national territory — Comparability)

(2011/C 319/14)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicants: Cathy Schulz-Delzers, Pascal Schulz

Defendant: Finanzamt Stuttgart III

Re:

Reference for a preliminary ruling — Finanzgericht Baden-Württemberg — Interpretation of Articles 18, 21 and 45

TFEU — National income tax provisions exempting expatriation allowances granted to taxpayers employed by a legal person governed by public law and pertaining to a State-funded salary — Lack of such exemption with regard to allowances paid to taxpayers employed on national territory by a legal person governed by public law of another Member State and pertaining to a salary funded by that other State

Operative part of the judgment

Article 39 EC must be interpreted as not precluding a provision, such as Paragraph 3(64) of the Law on income tax (Einkommensteuergesetz), according to which allowances such as those at issue in the main proceedings, granted to a civil servant of a Member State working in another Member State in order to compensate for a loss of purchasing power at the place of secondment, are not taken into account in determining the tax rate applicable in the first Member State to the other income of the taxpayer or of his spouse, whereas equivalent allowances granted to a civil servant of that other Member State working on the territory of the first Member State are taken into account for the purposes of determining that tax rate.

⁽¹⁾ OJ C 221, 14.8.2010.

Appeal brought on 3 March 2011 by Ignacio Ruipérez Aguirre and ATC Petition against the judgment of the General Court (Fourth Chamber) delivered on 20 January 2011 in Case T-487/10 Ignacio Ruipérez Aguirre and ATC Petition v European Commission

(Case C-111/11 P)

(2011/C 319/15)

Language of the case: Spanish

Parties

Appellants: Ignacio Ruipérez Aguirre and ATC Petition (represented by: M.J. Sánchez González, abogada)

Other party to the proceedings: European Commission

By order of 14 July 2011, the Court of Justice (Sixth Chamber) dismissed the appeal.

Reference for a preliminary ruling from the Landgericht Köln (Germany) lodged on 5 August 2011 — Germanwings GmbH v Amend

(Case C-413/11)

(2011/C 319/16)

Language of the case: German

Referring court

Landgericht Köln