

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 11 February 2010 — Systeme Helmholtz GmbH v Hauptzollamt Nürnberg

(Case C-79/10)

(2010/C 113/35)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Systeme Helmholtz GmbH

Defendant: Hauptzollamt Nürnberg

Questions referred

1. Is the first sentence of Article 14(1)(b) of Council Directive 2003/96/EC ⁽¹⁾ of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that the exclusion of private pleasure-flying from the tax advantage signifies that the exemption for energy products supplied for use as fuel for the purpose of air navigation is to be applied only to airlines, or is the exemption to be applied to all fuel used for air navigation, provided that the aircraft is used for the purpose of earning income?
2. Is Article 15(1)(j) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that it also pertains to fuel which an aircraft requires for the purposes of flights to and from an aircraft maintenance facility, or does the possibility of obtaining a tax advantage only apply to companies whose actual business purpose is the manufacture, development, testing and maintenance of aircraft?
3. Is Article 11(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that, where an aircraft which is used for both private and commercial purposes is used for maintenance or training flights, pursuant to Article 14(1)(b)

of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity an exemption proportionate to the commercial use should be applied in respect of the fuel used for these flights?

4. If the third question is answered in the negative: may it be concluded from the non-applicability of Article 11(3) of Directive 2003/96/EC for the purposes of Article 14(1)(b) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity that where there is mixed use of an aircraft for private and commercial purposes no exemptions are to be applied to maintenance or training flights?
5. If the third question is answered in the affirmative or if an analogous legal consequence arises from another provision of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity: which criteria and which reference period should be taken as a basis for determining the respective proportion of use, within the meaning of Article 11(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, for maintenance and training flights?

⁽¹⁾ OJ 2003 L 283, p. 51.

Action brought on 11 February 2010 — European Commission v Ireland

(Case C-82/10)

(2010/C 113/36)

Language of the case: English

Parties

Applicant: European Commission (represented by: N. Yerrell, Agent)

Defendant: Ireland