



Reports of Cases

Case C-532/11

Susanne Leichenich

v

Ansbert Peffekoven and Ingo Horeis

(Reference for a preliminary ruling from the Oberlandesgericht Köln)

(Directive 77/388/EEC — VAT — Exemptions — Article 13B(b) — Leasing or letting of immovable property — Houseboat, without a system of propulsion, permanently attached alongside a riverbank — Leasing of the houseboat, including the landing stage, the plot of land and the area of water contiguous therewith — Exclusive use for the permanent operation of a restaurant-discotheque — Single supply)

Summary — Judgment of the Court (Third Chamber), 15 November 2012

1. *Harmonisation of fiscal legislation — Common system of value added tax — Exemptions provided for in the Sixth Directive — Exemption for lettings of immovable property — Concept — Leasing of a houseboat, including the landing stage, the plot of land and the area of water contiguous therewith for the permanent operations of a restaurant-discotheque — Included*

(Council Directive 77/388, Art. 13B(b))

2. *Harmonisation of fiscal legislation — Common system of value added tax — Exemptions provided for in the Sixth Directive — Exemption for lettings of immovable property — Exception for lettings of parking places for vehicles — Concept of vehicles — Houseboat, including the landing stage, the plot of land and the area of water contiguous therewith for the permanent operations of a restaurant-discotheque — Not included*

(Council Directive 77/388, Art. 13B(b), para. 2)

1. Article 13B(b) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes must be interpreted as meaning that the concept of the leasing or letting of immovable property includes the leasing of a houseboat, including the space and the landing stage contiguous therewith, which is fixed by attachments which are not easily removable to the bank and bed of a river, stays in a demarcated and identifiable location in the river water and is exclusively used, according to the terms of the leasing contract, for the permanent operation of a restaurant-discotheque at that location. That leasing constitutes a single exempt supply, without it being necessary to distinguish between the leasing of the houseboat and that of the landing stage.

(see para. 29, operative part. 1)

2. A leased houseboat and the space and landing stage contiguous therewith, which is fixed by attachments which are not easily removable to the bank and bed of the river, stays in a demarcated and identifiable location in the river water and is exclusively used, according to the terms of the leasing

contract, for the permanent operation of a restaurant-discotheque at that location, does not constitute a vehicle within the meaning of Article 13B(b), point 2, of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes.

It is not the initial use of an object which is significant, but its actual and current function. The initial use of an object cannot definitively assure for it a certain VAT treatment, notwithstanding modification of the actual use which is made of that object.

In accordance with the principle of fiscal neutrality, the function of such a houseboat is comparable with that of a building used as a restaurant installed close to the latter, on dry land. Therefore, the restaurant-discotheque functioning on that houseboat is in economic competition with similar establishments situated in buildings incorporated into the ground.

(see paras 33, 36, 37, operative part 2)