

Reference for a preliminary ruling from the Förvaltningsrätten i Falun (Sweden) lodged on 27 June 2011 — Daimler AG v Skatteverket

(Case C-318/11)

(2011/C 269/54)

Language of the case: Swedish

Referring court

Förvaltningsrätten i Falun

Parties to the main proceedings

Applicant: Daimler AG

Defendant: Skatteverket

Questions referred

1. How is the expression 'fixed establishment from which business transactions are effected' to be interpreted in an assessment on the basis of the relevant provisions of European Union law? ⁽¹⁾
2. Is a taxable person who has the seat of his economic activity in another Member State and whose activity principally consists of the manufacture and sale of cars, who has carried out winter testing of car models at installations in Sweden, to be regarded as having had a fixed establishment in Sweden from which business transactions have been effected where that person has acquired goods and services that were received and used at testing installations in Sweden without having his own staff permanently stationed in Sweden and where the testing activity is necessary to the performance of the person's economic activity in another Member State?
3. Does it affect the answer to question 2 if the taxable person has a wholly-owned Swedish subsidiary, the purpose of which is almost exclusively to supply the person with various services for that testing activity?

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1), Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ L 331, 27.12.1979, p. 11), Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ L 44, 20.2.2008, p. 23).

Reference for a preliminary ruling from the Förvaltningsrätten i Falun (Sweden) lodged on 27 June 2011 — Widex A/S v Skatteverket

(Case C-319/11)

(2011/C 269/55)

Language of the case: Swedish

Referring court

Förvaltningsrätten i Falun

Parties to the main proceedings

Applicant: Widex A/S

Defendant: Skatteverket

Questions referred

1. How is the expression 'fixed establishment from which business transactions are effected' to be interpreted in an assessment on the basis of the relevant provisions of European Union law? ⁽¹⁾
2. Is a taxable person who has the seat of his economic activity in another Member State and whose activity consists inter alia of the manufacture and sale of hearing aids to be regarded, by virtue of carrying out research in audiology from a research division in Sweden, as having had a fixed establishment in Sweden from which business transactions have been effected where that person has acquired goods and services that were received and used at the research division in question in Sweden?

⁽¹⁾ Articles 170 and 171 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), Articles 1 and 2 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11).

Reference for a preliminary ruling from the Sąd Rejonowy w Koszalinie (Republic of Poland), lodged on 28 June 2011 — Krystyna Alder and Ewald Alder v Sabina Orłowska and Czesław Orłowski

(Case C-325/11)

(2011/C 269/56)

Language of the case: Polish

Referring court

Sąd Rejonowy w Koszalinie

Parties to the main proceedings

Claimants: Krystyna Alder, Ewald Alder

Defendants: Sabina Orłowska, Czesław Orłowski

Question referred

Are Article 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ⁽¹⁾ and Article 18 of the Treaty on the Functioning of the European Union to be interpreted as meaning that it is permissible to place in the case file, deeming them to have been effectively served, court documents which are addressed to a party whose place of residence or habitual abode is in another Member State, if that party has failed to appoint a representative who is authorised to accept service and is resident in the Member State in which the court proceedings are being conducted?

⁽¹⁾ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 29 June 2011 — J.J. Komen en Zonen Beheer Heerhugowaard B.V. v Staatssecretaris van Financiën

(Case C-326/11)

(2011/C 269/57)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: J.J. Komen en Zonen Beheer Heerhugowaard B.V.

Respondent: Staatssecretaris van Financiën

Question referred

Must Article 13B(g), in conjunction with Article 4(3)(a), of the Sixth Directive ⁽¹⁾ be interpreted as meaning that the supply of a building in respect of which, prior to its supply, the vendor had transformation work carried out with a view to the creation of a new building (refurbishment), work which was continued and completed by the purchaser after its supply, is not exempt from VAT?

⁽¹⁾ 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).

Appeal brought on 28 June 2011 by Alder Capital Ltd against the judgment of the General Court (Eighth Chamber) delivered on 13 April 2011 in Case T-209/09: Alder Capital Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Gimv Nederland BV

(Case C-328/11 P)

(2011/C 269/58)

Language of the case: English

Parties

Appellant: Alder Capital Ltd (represented by: A. von Mühlendahl, H. Hartwig, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Gimv Nederland BV

Form of order sought

The appellant requests the Court of Justice to make the following orders:

- The judgment of the General Court of 13 April 2011 in Case T-209/09 and the decision of the Second Board of Appeal of the Office of 20 February 2009 in Case R 486/2008-2 are annulled.
- The costs of the proceedings before the Board of Appeal of the Office, before the General Court and before this Court shall be borne by the Office and by the Intervener.

Pleas in law and main arguments

The Appellant claims that the contested judgment must be annulled on three separate grounds.

The principal ground is that the General Court committed legal error when it held that the Board of Appeal was required, as a matter of law, to review the claim for a declaration of invalidity as it had been presented to the Office's Invalidity Division. The Appellant's claim is that the scope of review was limited to the subject matter of the appeal brought by the Appellant.

The subsidiary grounds are:

- that the General Court committed legal error in dismissing the Appellants' arguments as 'irrelevant' that the Intervener infringed applicable financial services authorisation and regulation and anti-money laundering laws and regulations in offering the services for which its mark 'Halder' was used in Germany (infringement of Article 56 (2) and (3) CTMR in conjunction with Article 15 CTMR), and
- that the General Court committed legal error in concluding that there was a likelihood of confusion even though the degree of attention of the public was 'very high' (infringement of Article 8 (1)(b) CTMR).