

Reference for a preliminary ruling from the Administrativen Sad Varna (Bulgaria) lodged on 18 July 2011 — Digitalnet OOD v Nachalnik na Mitnicheski punkt — Varna Zapad pri Mitnitsa Varna

(Case C-383/11)

(2011/C 298/25)

Language of the case: Bulgarian

Referring court

Administrativen Sad Varna

Parties to the main proceedings

Applicant: Digitalnet OOD

Defendant: Nachalnik na Mitnicheski punkt — Varna Zapad pri Mitnitsa Varna

Questions referred

1. How are the terms ‘modem’ and ‘internet access’ to be interpreted for the purposes of subheading 8528 71 13 of the 2009 Combined Nomenclature (Commission Regulation (EC) No 1031/2008 of 19 September 2008 ⁽¹⁾, OJ L 291, p. 1) and the Explanatory Notes?
2. What is the relevant function (main function) of the set-top box, pursuant to which the tariff classification must be carried out: receipt of television signals or the use of a modem which facilitates interactive information exchange for the purposes of gaining access to the internet?
3. If the relevant function (main function) of the set-top box is the use of a modem which facilitates interactive information exchange for the purposes of gaining access to the internet, is the type of modulation and demodulation which the modem brings about or the type of modem used relevant to the tariff classification, or does it suffice that access to the internet is provided by means of the modem?
4. Is it permissible for the customs authorities to amend the customs duty classification of a specific product without physically checking the imported product, and for the experts’ report to be issued exclusively on the basis of written evidence, namely the user manual, technical characteristics and inspection of a device made by the same manufacturer which has the same number from another imported consignment?
5. Under which code of the 2009 Combined Nomenclature (Commission Regulation (EC) No 1031/2008 of 19 September 2008, OJ L 291, p. 1) should the goods forming the subject-matter of the proceedings (set-top box) be classified, having regard to the technical characteristics established in the main proceedings?

⁽¹⁾ OJ 2008 L 291, p. 1.

Reference for a preliminary ruling from the Conseil d’Etat lodged on 22 July 2011 — Société le Crédit Lyonnais v Ministre du budget, des comptes publics et de la réforme de l’Etat

(Case C-388/11)

(2011/C 298/26)

Language of the case: French

Referring court

Conseil d’Etat

Parties to the main proceedings

Applicant: Société le Crédit Lyonnais

Defendant: Ministre du budget, des comptes publics et de la réforme de l’Etat

Questions referred

1. Having regard to the rules on the territorial scope of value added tax, can Article 17(2) and (5) and Article 19 of the Sixth Directive 77/388/EEC ⁽¹⁾ be interpreted as meaning that, for calculation of the deductible proportion for which they provide, the principal establishment of a company established in a Member State must take account of the income achieved by each of its branches established in another Member State and, correspondingly, those branches must take account of the totality of income falling within the scope of value added tax achieved by the company?
2. Must the same solution be adopted for branches established outside the European Union, particularly in the light of the right to deduct provided for by Article 17(3)(a) and (c), in relation to the banking and financial operations referred to in Article 13B(d)(1) to (5), which are carried out for the benefit of customers established outside the Community?
3. Might the answer to the first two questions vary from one Member State to another, depending on the options made available by the last subparagraph of Article 17(5), particularly with regard to the establishment of different sectors of business?
4. If the answer to either of the first questions is affirmative, first, is it appropriate to limit the application of a deductible proportion of that kind to calculation of rights to deduct value added tax that has been charged on expenses incurred by the principal establishment for the benefit of foreign branches and, second, must income achieved abroad be taken into account in accordance with the rules applicable in the State of the branch or in the State of the principal establishment?

⁽¹⁾ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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).