

added tax (OJ 2006 L 347, p. 1) — Deduction of input tax — Taxable person having, under national legislation on pensions, set up a pension fund in order to safeguard the pension rights of his employees as members of that fund — Deduction of input tax on services supplied to him for the purposes of the management of the pension fund

Operative part of the judgment

Article 17 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 must be interpreted as meaning that a taxable person who has set up a pension fund in the form of a legally and fiscally separate entity, such as that at issue in the main proceedings, in order to safeguard the pension rights of his employees and former employees, is entitled to deduct the value added tax he has paid on services relating to the management and operation of that fund, provided that the existence of a direct and immediate link is apparent from all the circumstances of the transactions in question.

⁽¹⁾ OJ C 98, 31.3.2012.

Judgment of the Court (Second Chamber) of 18 July 2013 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — ‘Evita-K’ EOOD v Direktor na Direktsia ‘Obzhalvane i upravlenie na izpalnenieto’ — Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-78/12) ⁽¹⁾

(Directive 2006/112/EC — Common system of value added tax — Supply of goods — Concept — Right to deduct — Refusal — Actual performance of a taxable transaction — Regulation (EC) No 1760/2000 — System for the identification and registration of bovine animals — Ear tags)

(2013/C 260/19)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: ‘Evita-K’ EOOD

Defendant: Direktor na Direktsia ‘Obzhalvane i upravlenie na izpalnenieto’ — Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Re:

Request for a preliminary ruling — Administrativen sad Sofia-grad — Interpretation of Articles 14(1), 178(a), 185(1), 226(6) and 242 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Right to deduct input VAT on the purchase of animals — Proof of actual delivery of the goods — Whether or not there is an obligation to indicate in the invoices the ear tags of animals subject to identification under EU veterinary legislation — Whether or not there is an obligation to prove the supplier’s ownership

Operative part of the judgment

1. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in the context of the exercise of the right to deduct value added tax, the concept of ‘supply of goods’ for the purposes of that directive and evidence that such a supply has in fact been carried out are not linked to the form of the acquisition of a right of ownership of the goods concerned. It is for the referring court to carry out, in accordance with the national rules relating to evidence, an overall assessment of all the facts and circumstances of the dispute before it in order to determine whether the supplies of goods at issue in the main proceedings were actually carried out and whether, as the case may be, a right to deduct may be exercised on the basis of those supplies.
2. Article 242 of Directive 2006/112 must be interpreted as meaning that it does not require taxable persons who are not agricultural producers to show in their accounts the subject-matter of the supplies of goods which they make, when animals are concerned, and to prove that those animals were subject to control in accordance with International Accounting Standard 41 ‘Agriculture’.
3. Article 226(6) of Directive 2006/112 must be interpreted as meaning that it does not require a taxable person who carries out supplies of goods concerning animals, which are subject to the identification and registration system established by Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006, to mention the ear tags of those animals on the invoices relating to those supplies.
4. Article 185(1) of Directive 2006/112 must be interpreted as allowing a deduction of value added tax to be adjusted only if the taxable person concerned previously benefitted from a right to deduct that tax under the conditions laid down in Article 168(a) of that directive.

⁽¹⁾ OJ C 133, 5.5.2012.