Judgment of the Court (Eighth Chamber) of 7 March 2013 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — Efir OOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' Plovdiv

(Case C-19/12) ([1])

(Value added tax — Directive 2006/112/EC — Articles 62, 63, 65, 73 and 80 — Establishment by natural persons of a building right in favour of a company in exchange for construction services by that company for those persons — Barter contract — VAT on construction services — Chargeable event — When chargeable — Whether both taxable transactions and exempt transactions are covered by the concept of a chargeable event — Payment on account of the entire consideration — Payment on account — Basis of assessment for a transaction in the event of consideration in the form of goods or services — Direct effect)

(2013/C 123/09)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Efir OOD

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' Plovdiv

Re:

Request for a preliminary ruling –Varhoven administrativen sad — Interpretation of Article 62(1) and (2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Occurrence of the chargeable event — National legislation providing for the application of the concept of a chargeable event to both taxable transactions and exempt transactions — Establishment by natural persons of a building right in favour of a company in exchange for construction services by that company for those persons

Operative part of the judgment

1. *Articles 63 and 65 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in circumstances such as those of the main proceedings, where building rights are established in favour of a company to erect a building, by way of consideration for construction services of certain real property which that company has undertaken to deliver on a turn-key basis to the persons who established those building rights, those provisions do not preclude the VAT on those construction services from becoming chargeable as from the moment when those building rights are established, that is to say, before those services are performed, provided that, at the time those rights are established, all the relevant information concerning that future supply of services is already known and, therefore, in particular, the services in question are precisely identified, and the value of those rights may be expressed in monetary terms, which it is for the national court to verify.*

   In circumstances such as those of the main proceedings, where the transactions are not completed between parties having ties within the meaning of Article 80 of Directive 2006/112, which it is for the national court to verify, Articles 73 and 80 of that directive must be interpreted as precluding a national provision, such as that at issue in the main proceedings, under which, when the consideration for a transaction is made up entirely of goods or services, the taxable amount of the transaction is the open market value of the goods or services supplied.

2. *Articles 63, 65 and 73 of Directive 2006/112 have direct effect.*

([1]) OJ C 89, 24.3.2012.

Judgment of the Court (Eighth Chamber) of 7 March 2013 (request for a preliminary ruling from the Székesfehérvári Törvényszék — Hungary) — Gábor Fekete v Nemzeti Adó- és Vámhivatal Közép-dunántúli Regionális Vám- és Pénzügyőri Főigazgatósága,

(Case C-182/12) ([1])

(Community Customs Code — Article 137 — Regulation implementing the Customs Code — Article 561(2) — Conditions for total relief from import duties — Importation into a Member State of a vehicle whose owner is established in a third country — Private use)

(2013/C 123/10)

Language of the case: Hungarian

Referring court

Székesfehérvári Törvényszék (Hungary)

Parties to the main proceedings

Applicant: Gábor Fekete

Defendant: Nemzeti Adó- és Vámhivatal Közép-dunántúli Regionális Vám- és Pénzügyőri Főigazgatósága,

Re:

Request for a preliminary ruling — Székesfehérvári Törvényszék — Interpretation of Article 561(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) — Total relief from import duty — Private use of a means of transport — Concept of employment relationship — Importation into a Member State of a vehicle belonging to a foundation established in a third country by the chairman of the board of that foundation — Authorisation of the foundation in question for the chairman of the board to use and drive the vehicle concerned

Operative part of the judgment

Article 561(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 993/2001 of 4 May 2001 must be interpreted as meaning that the total relief from import duties provided for by that provision for a means of transport used privately by a person established in the customs territory of the European Union may be granted only if such use is provided for in a contract of employment between that person and the owner of the vehicle established outside that territory.

([1]) OJ C 217, 21.07.2012.

Request for a preliminary ruling from the Gerechtshof Amsterdam (Netherlands) lodged on 25 January 2013 — Inspecteur van de Belastingdienst Noord/kantoor Groningen v SCA Group Holding BV

(Case C-39/13)

(2013/C 123/11)

Language of the case: Dutch

Referring court

Gerechtshof Amsterdam

Parties to the main proceedings

Appellant: Inspecteur van de Belastingdienst Noord/kantoor Groningen

Respondent: SCA Group Holding BV

Questions referred

1. Does denying the respondent the opportunity of having the Netherlands fiscal unity regime applied to the activities and the assets of the (sub-)sub-subsidiaries established in the Netherlands — that is to say, Alphabet Holding, HP Holding and Alpha Holding — constitute a restriction of the freedom of establishment within the meaning of Article 43 EC in conjunction with Article 48 EC?

   In that context, in the light of the objectives pursued by the Netherlands fiscal unity regime …, is the situation of the (sub-)sub-subsidiaries Alphabet Holding, HP Holding and Alpha Holding objectively comparable … to (i) the situation of companies established in the Netherlands which are (sub-)subsidiaries of an intermediate holding company established in the Netherlands which has not elected to be integrated in a fiscal unity with its parent company established in the Netherlands, and which therefore, as sub-subsidiaries, similarly to Alphabet Holding, HP Holding and Alpha Holding, have no access to the fiscal unity regime with — exclusively — its grandparent company, or to (ii) the situation of sub-subsidiaries established in the Netherlands which, together with their parent company/intermediate holding company established in the Netherlands, have elected to form a fiscal unity with their (grand-)parent company established in the Netherlands and whose activities and assets therefore, unlike those of Alphabet Holding, HP Holding and Alpha Holding, are consolidated for tax purposes?

2. In answering the first sentence of Question 1, does it still make a difference … whether the domestic companies concerned are held by one single intermediate holding company (at a higher level of the group structure) in the other Member State or whether, as in the case of Alphabet Holding, HP Holding and Alpha Holding, they are held by two (or more) intermediate holding companies — albeit situated in that other Member State — (at two or more higher levels of the group structure)?

3. If and to the extent that the first sentence of Question 1 must be answered in the affirmative, can such a restriction then be justified by overriding reasons in the general interest, more particularly by the need to maintain tax consistency, including the prevention of unilateral and bilateral double use of losses …?

   Does it still make a difference in that context that it has been established in the specific case that there is no double use of losses …?

4. If and to the extent that Question 3 must be answered in the affirmative, should the restriction be considered to be proportionate …?