

Defendant: The Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. When applying the mandatory provisions of Article 134 to the provisions of Article 132(1)(m) of the Principal VAT Directive ⁽¹⁾ in the circumstances of a body accepted to be a non-profit-making organisation making supplies of the right to play golf, what supplies, if any constitute 'the transactions exempted'?
2. Is it legitimate to restrict exemption under Article 132(1)(m) by reference to whether the services of granting a right to play golf are made to a member of the non-profit-making organisation ?
3. Are the provisions of Article 134 to be interpreted as restricting exemption only to supplies which are 'closely linked' (in the sense of peripheral) to the 'transactions exempted' or to any supply falling within Article 132(1)(m)?
4. In circumstances where the non-profit-making organisation by reference to its publicly stated aims, regularly and consistently permits non-members to play golf, what is the interpretation to be placed on the 'basic purpose' of making the charge to non-members?
5. For the purposes of Article 134(b) to what must the 'additional income' be additional?
6. If income derived from providing access to sporting facilities to non-members is not to be treated as 'additional income' for the purposes of Article 134(b), does Article 133(d) permit a Member State to exclude such income from exemption if it is likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT, whilst not at the same time withdrawing the exemption from income derived from providing membership to members of the same non-profit-making organizations if the members' subscriptions are themselves likely to cause at least some distortion of competition?
7. In particular, is it necessary for any condition implemented under Article 133(d) to apply to all services supplied by the non-profit-making organisation otherwise falling within the exemption or is it permissible to allow a partial restriction i.e. permitting exemption for the supply of the right to play golf to members but not to non-members where both membership and non-membership supplies are in competition with commercial organisations?

8. What, if any, is the difference in requirement between Article 133(d) which requires a likely 'distortion of competition' and that in 134(b) which envisages only the existence of direct competition?

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax
OJ L 347, p. 1

Reference for a preliminary ruling from the Tribunal Central Administrativo Norte (Portugal) lodged on 9 November 2012 — IPTM-Instituto Portuário e dos Transportes Marítimos v Navileme-Consultadoria Náutica, Lda, Nautizende — Consultadoria Náutica, Lda

(Case C-509/12)

(2013/C 32/05)

Language of the case: Portuguese

Referring court

Tribunal Central Administrativo Norte

Parties to the main proceedings

Applicant: IPTM-Instituto Portuário e dos Transportes Marítimos

Defendants: Navileme-Consultadoria Náutica, Lda, Nautizende — Consultadoria Náutica, Lda

Question referred

Must the law of the European Union, having regard to the principle of prohibition of discrimination between nationals of one Member State and nationals of another Member State (Article 18 TFEU, formerly Article 12 EC), having regard to the free movement of persons in the EU and exceptions thereto (Article 45(3) TFEU, formerly Article 39 EC) and having regard to the freedom to provide services and possible restrictions thereof (Article 52 TFEU, formerly Article 46 EC, by virtue of Article 62 TFEU, formerly Article 55 EC), be interpreted as precluding a provision of national law which requires residence within national territory as a precondition for the issue of a recreational boating licence?