

Judgment of the Court (First Chamber) of 23 November 2017 (request for a preliminary ruling from the Commissione tributaria provinciale di Siracusa — Italy) — Enzo Di Maura v Agenzia delle Entrate — Direzione Provinciale di Siracusa

(Case C-246/16) ⁽¹⁾

(Reference for a preliminary ruling — Value added tax (VAT) — Taxable amount — Sixth Directive 77/388/EEC — Second subparagraph of Article 11C(1) — Restriction of the right to reduce the taxable amount in the event of non-payment by the other party to the contract — Scope for implementation by the Member States — Proportionality of the period of pre-financing by the trader)

(2018/C 022/10)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Siracusa

Parties to the main proceedings

Applicant: Enzo Di Maura

Defendant: Agenzia delle Entrate — Direzione Provinciale di Siracusa

Operative part of the judgment

Article 11C(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the law of the Member State relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that a Member State may not make the reduction of the VAT taxable amount in the event of total or partial non-payment subject to the condition that insolvency proceedings have been unsuccessful when such proceedings may last longer than ten years.

⁽¹⁾ OJ C 260, 18.7.2016.

Judgment of the Court (Tenth Chamber) of 16 November 2017 — Ludwig-Bölkow-Systemtechnik GmbH v European Commission

(Case C-250/16 P) ⁽¹⁾

(Appeal — Arbitration clause — Sixth framework programme for research, technological development and demonstration activities (2002-2006) — Partial repayment of the sums paid to the appellant — Liquidated damages)

(2018/C 022/11)

Language of the case: German

Parties

Appellant: Ludwig-Bölkow-Systemtechnik GmbH (represented by: M. Núñez Müller, Rechtsanwalt)

Other party to the proceedings: European Commission (represented by: T. Maxian Rusche and F. Moro, acting as Agents)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Ludwig-Bölkow-Systemtechnik GmbH to pay the costs.

⁽¹⁾ OJ C 222, 20.6.2016.

Judgment of the Court (Fourth Chamber) of 22 November 2017 (request for a preliminary ruling from the Supreme Court — Ireland) — Edward Cussens, John Jennings, Vincent Kingston v T. G. Brosnan

(Case C-251/16) ⁽¹⁾

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Sixth Directive 77/388/EEC — Article 4(3)(a) and Article 13B(g) — Exemption of the supply of buildings, and of the land on which they stand, other than as described in Article 4(3)(a) — Principle that abusive practices are prohibited — Applicability in the absence of national provisions transposing that principle — Principles of legal certainty and of the protection of legitimate expectations)

(2018/C 022/12)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Appellants: Edward Cussens, John Jennings, Vincent Kingston

Respondent: T.G. Brosnan

Operative part of the judgment

1. The principle that abusive practices are prohibited must be interpreted as being capable, regardless of a national measure giving effect to it in the domestic legal order, of being applied directly in order to refuse to exempt from value added tax sales of immovable goods, such as the sales at issue in the main proceedings, carried out before the judgment of 21 February 2006, Halifax and Others (C-255/02, EU:C:2006:121), was delivered, and the principles of legal certainty and of the protection of legitimate expectations do not preclude this.
2. 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, if the transactions at issue in the main proceedings should be redefined pursuant to the principle that abusive practices are prohibited, those of the transactions which do not constitute such a practice may be subject to value added tax on the basis of the relevant provisions of national legislation providing for such liability.
3. The principle that abusive practices are prohibited must be interpreted as meaning that, in order to determine, on the basis of paragraph 75 of the judgment of 21 February 2006, Halifax and Others (C-255/02, EU:C:2006:121), whether the essential aim of the transactions at issue in the main proceedings is to obtain a tax advantage, account should be taken of the objective of the leases preceding the sales of immovable property at issue in the main proceedings in isolation.
4. The principle that abusive practices are prohibited must be interpreted as meaning that supplies of immovable property such as those at issue in the main proceedings are liable to result in the accrual of a tax advantage contrary to the purpose of the relevant provisions of Sixth Directive 77/388 where the properties had, before their sale to third party purchasers, not yet been actually used by their owner or their tenant. It is for the referring court to verify whether that is the case in the main proceedings.