

Judgment of the Court (Fifth Chamber) of 5 July 2018 (request for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — Marcandi Ltd, trading as ‘Madbid’ v Commissioners for Her Majesty’s Revenue and Customs

(Case C-544/16) ⁽¹⁾

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 2(1)(c) — Issuing of ‘credits’ that can be used to place bids in online auctions — Supply of services for consideration — Preliminary transaction — Article 73 — Taxable amount)

(2018/C 301/03)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Marcandi Ltd, trading as ‘Madbid’

Defendant: Commissioners for Her Majesty’s Revenue and Customs

Operative part of the judgment

1. Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the issue of ‘credits’, such as those at issue in the main proceedings, which allow an operator’s clients to bid in the auctions that it organises, are a supply of services for consideration, for which the consideration is the amount paid in return for those ‘credits’.
2. Article 73 of Directive 2006/112 must be interpreted as meaning that, in circumstances such as those in the main proceedings, the value of ‘credits’ used in order to bid is not included in the consideration received by the taxable person in return for the supplies of goods that it makes for the benefit of users who won an auction organised by it, or users who purchased a product using the ‘buy now’ or ‘earned discount’ features.
3. When interpreting the relevant provisions of EU and national law, courts of a Member State that find that the same transaction has been the object of a different tax treatment for the purposes of VAT in another Member State have the power, or even — depending on whether there is a judicial remedy under national law against its decisions — an obligation, to refer a request for a preliminary ruling to the Court.

⁽¹⁾ OJ C 14, 16.1.2017.