

Defendants: Dödsboet efter Ingvar Mattsson, Länsförsäkringar Sak Försäkringsaktiebolag

Questions referred

- 1 (a) Does Directive 2002/92⁽¹⁾ cover activity where an insurance intermediary had no intention of concluding an actual insurance contract? Is it relevant whether such an intention was absent before the activity was commenced or came into being only subsequently?
- (b) In the situation envisaged in question 1(a), is it relevant if the intermediary has also carried out proper insurance mediation activity alongside the fictive activity?
- (c) Also in the situation envisaged in question 1(a), is it relevant that the activity appeared, *prima facie*, to the client to be work preparatory to the conclusion of an insurance contract? Is the client's understanding, be it well founded or unfounded, of whether insurance mediation was involved of any relevance?
- 2 (a) Does Directive 2002/92 govern advice, economic or other, given in connection with insurance mediation but which as such does not concern the actual signing or continuation of an insurance contract? In that regard, what does apply, in particular, as regards advice concerning the placing of capital in the context of capital assurance?
- (b) Is advice such as that referred to in question 2(a), where, by definition, it constitutes investment advice under Directive 2004/39,⁽²⁾ also or instead covered by the provisions of that directive? If such advice is also covered by Directive 2004/39, does one set of rules take precedence over the other?

⁽¹⁾ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ 2003 L 9, p. 3).

⁽²⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

**Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on
28 October 2016 — Marcandi Limited, trading as 'Madbid' v Commissioners for Her Majesty's
Revenue & Customs**

(Case C-544/16)

(2017/C 014/32)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Marcandi Limited, trading as 'Madbid'

Defendant: Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. On the correct interpretation of articles 2(1), 24, 62, 63, 65, and 73 of Council Directive 2006/112/EC⁽¹⁾ of 28 November 2006 on the common system of value added tax, and in circumstances such as those in the main proceedings:
 - a) is the issue of Credits to users, by Madbid, in return for a money payment:
 - i. a 'preliminary transaction' outside the scope of article 2(1), of the sort identified by the Court in *MacDonald Resorts Ltd v Revenue and Customs Commissioners* (C-270/09) [2010] ECR I-13179 ECLI:EU:C:2010:780, at paragraphs 23-42; or

- ii. a supply of services by Madbid within the meaning of article 2(1)(c), namely the grant of a right to participate in online auctions;
- b) if the grant of a right to participate in online auctions is a supply of services by Madbid, then is it a supply made 'for consideration' within the meaning of article 2(1)(c), namely the payment for it (i.e. the money received by Madbid from a user in return for Credits);
- c) is the answer to (b) different if the payment for the Credits also serves as an entitlement for the user to acquire goods to the same value in the event of the user not succeeding in the auction;
- d) if Madbid does not make a supply of services for consideration when it issues Credits to its users in return for a money payment, does it make such a supply at any other time;

and what principles should be applied in determining the answer to those questions?

2. On the correct interpretation of articles 2(1), 14, 62, 63, 65, 73 and 79(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax what, in circumstances such as those in the main proceedings, is the consideration obtained by Madbid in return for the supplies of goods that it makes to users, for the purposes of articles 2(1)(a) and 73? In particular, and taking into account the answer to Question 1:

- a) is the money paid by a user to Madbid for Credits a 'payment...on account' for a supply of goods within the scope of article 65, so that VAT is 'chargeable' on receipt of that payment, and such that the payment received by Madbid from the user is consideration for a supply of goods;
- b) if a user buys goods through the Buy Now or Earned Discount features, is the value of Credits used in placing bids in auctions and, where the bid is unsuccessful, has the effect of generating Earned Discount or reducing the Buy Now price:
 - i. a 'price discount' within the meaning of article 79(b), such that the consideration for Madbid's supply of the goods is the money actually paid to Madbid by the user at the time of purchasing the goods and no more; or
 - ii. part of the consideration for the supply of goods, such that the consideration for Madbid's supply of goods includes both the money paid to Madbid by the user at the time of purchasing the goods and the money paid by the user for Credits used in placing unsuccessful bids in auctions;
- c) if a user exercises the right to buy goods after winning an online auction, is the consideration for the supply of those goods the stated auction winning price (plus shipping and handling charges) and no more, or is the value of the Credits that the winner used to bid in that auction also part of the consideration for the supply of those goods by Madbid to the user;

or what principles should be applied in determining the answer to those questions?

3. Where two Member States treat a transaction differently for the purposes of VAT, to what extent should the courts of one of those Member States take into account, when interpreting the relevant provisions of EU law and national law, the desirability of avoiding:

- a) double taxation of the transaction; and/or

b) non-taxation of the transaction;

and what bearing does the principle of fiscal neutrality have on this question?

⁽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 First-tier Tribunal (Tax Chamber) (United Kingdom) made on
28 October 2016 — Kubota (UK) Limited, EP Barrus Limited v Commissioners for Her Majesty's
Revenue & Customs**

(Case C-545/16)

(2017/C 014/33)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicants: Kubota (UK) Limited, EP Barrus Limited

Defendant: Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Is Commission Implementing Regulation (EU) 2015/221 ⁽¹⁾ concerning the classification of certain goods in the Combined Nomenclature invalid in so far as it classifies the vehicles specified in the Regulation under CN Code 8704 21 91, rather than CN Code 8704 10?
2. In particular, is Commission Implementing Regulation (EU) 2015/221 concerning the classification of certain goods in the Combined Nomenclature invalid in so far as it: unduly restricts the scope of subheading 8704-10; takes into account impermissible factors; is internally inconsistent; does not take proper account of the Explanatory Notes, CN headings and GIRs; and/or fails to take account of the relevant requirements identified by case law of the Court of Justice of the European Union in relation to CN heading 8704 10?

⁽¹⁾ Commission Implementing Regulation (EU) 2015/221 of 10 February 2015 concerning the classification of certain goods in the Combined Nomenclature
OJ L 37, p. 1

**Appeal brought on 16 November 2016 by European Commission against the judgment of the General
Court (Sixth Chamber) delivered on 15 September 2016 in Case T-386/14: Fih Holding and Fih
Erhvervsbank v Commission**

(Case C-579/16 P)

(2017/C 014/34)

Language of the case: English

Parties

Appellant: European Commission (represented by: L. Flynn, K. Blanck-Putz, A. Bouchagiar, Agents)

Other parties to the proceedings: FIH Holding A/S, FIH Erhvervsbank A/S