Operative part of the judgment

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national practice which permits a taxable person to deduct the entirety of the input value added tax (VAT) paid on the purchase of goods and services by that taxable person for the purposes of performing both economic activities, which are subject to VAT, and non-economic activities, which do not come within the scope of VAT, on account of the absence, in the applicable tax legislation, of specific rules on allocation criteria which would allow the taxable person to determine the share of input tax which ought to be deemed to be connected to his economic and non-economic activities respectively.

([1]) OJ C 13, 15.1.2018.

Judgment of the Court (First Chamber) of 8 May 2019 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v L.W. Geelen

(Case C-568/17) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Sixth Directive 77/388/EEC — Article 9(2)(c) and (e) — Directive 2006/112/EC — Article 52(a) — Article 56(1)(k) — Supply of services — Place of taxable transactions — Connecting factor for tax purposes — Interactive sessions of an erotic nature filmed and broadcast live on the internet — Entertainment activity — Definition — Place where the services are physically carried out)

(2019/C 230/08)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financien

Respondent: L.W. Geelen

Operative part of the judgment

1. Article 9(2)(c), first indent, of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2002/38/EC of 7 May 2002, and Article 52(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as meaning that a complex service, such as that at issue in the main proceedings, which consists in offering interactive sessions of an erotic nature filmed and broadcast live on the internet constitutes an 'entertainment activity', within the meaning of those provisions, which must be considered as being 'physically carried out', within the meaning of those same provisions, in the place where the service provider has established his place of business or a permanent establishment whence that service is provided or, failing that, in the place of his domicile or habitual residence.

2. Article 9(2)(e), twelfth indent, of Sixth Directive 77/388, as amended by Directive 2002/38, and Article 56(1)(k) of Directive 2006/112, read in conjunction with Article 11 of Council Regulation (EC) No 1777/2005 of 17 October 2005 laying down implementing measures for Directive 77/388, must be interpreted as meaning that a supply of services, such as that at issue in the main proceedings, which consists in offering interactive sessions of an erotic nature filmed and broadcast live on the internet, does not come within the scope of those provisions when that service has been provided to beneficiaries who are all situated in the Member State of the provider of those services.

([1]) OJ C 424, 11.2.2017.

Judgment of the Court (Tenth Chamber) of 8 May 2019 (request for a preliminary ruling from the Riigikohus — Estonia) — Mittetulundusühing Järvelaev v Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

(Case C-580/17) ([1])

(Reference for a preliminary ruling — Common agricultural policy — Support for rural development by the European Agricultural Fund for Rural Development (EAFRD) — Regulation (EC) No 1698/2005 — Applicability ratione temporis — Article 72 — Durability of investment operations — Substantial modification to a co-financed investment operation — Asset acquired by means of an investment operation co-financed by the EAFRD and leased by the beneficiary of the funding to another — Financing, management and monitoring of the common agricultural policy — Regulation (EC) No 1306/2013 — Articles 54 and 56 — Obligation of the Member States to recover sums unduly paid as a result of irregularity or negligence — Concept of 'irregularity' — Initiation of recovery proceedings)

(2019/C 230/09)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: Mittetulundusühing Järvelaev

Defendant: Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

Operative part of the judgment

1. The durability of an investment operation which, as in the case in the main proceedings, was approved and co-financed by the European Agricultural Fund for Rural Development (EAFRD) in the 2007-2013 programming period must be assessed according to Article 72 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development. Where the recovery of sums unduly paid under that operation takes place after the programming period has come to an end, namely after 1 January 2014, recovery must be based on Article 56 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008.

2. A lease by the beneficiary of funding, such as that at issue in the main proceedings, which was paid as part of an investment operation co-financed by the European Agricultural Fund for Rural Development (EAFRD) under the Leader axis referred to in Regulation No 1698/2005, of an asset acquired by means of that funding to another who uses it in connection with the same activity as that which the beneficiary of the funding was to exercise may amount to a substantial modification to the co-financed investment operation within the meaning of Article 72(1) of that regulation, which is for the referring court to ascertain in the light of all the elements of fact and of law at issue against the alternative conditions referred to in Article 72(1)(a) and (b) thereof. For the purposes of finding that there has been undue advantage given to a firm or public body within the