Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 May 2019*

(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 — Reference for tax purposes — Live interactive erotic webcam sessions — Entertainment activity — Definition — Place where the services are physically carried out)

In Case C-568/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 22 September 2017, received at the Court on 27 September 2017, in the proceedings

Staatssecretaris van Financiën

v

L.W. Geelen,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President of the Court, acting as President of the First Chamber, J.-C. Bonichot, A. Arabadjiev, E. Regan (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: M. Szpunar,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 19 September 2018,

after considering the observations submitted on behalf of:

– the Netherlands Government, by C.S. Schillemans, M. Bulterman and J.M. Hoogveld, acting as Agents,

– the French Government, by D. Colas, E. de Moustier and A. Alidière, acting as Agents,

– the European Commission, by R. Troosters and R. Lyal, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 February 2019,

gives the following

* Language of the case: Dutch.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 9(2)(c), 1st indent, and (e), 12th indent, of 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 (OJ 1977 L 145, p. 1), as amended by Council Directive 2002/38/EC of 7 May 2002 (OJ 2002 L 128, p. 41) ('the Sixth Directive'), Article 52(a) and Article 56(1)(k) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) ('the VAT Directive') and Article 11 of Council Regulation (EC) No 1777/2005 of 17 October 2005 laying down implementing measures for Directive 77/388 (OJ 2005 L 288, p. 1).

2 The request has been made in proceedings between the Staatssecretaris van Financiën (State Secretary for Finance, Netherlands) and Mr L.W. Geelen concerning the payment of value added tax (VAT) on the provision of live interactive erotic webcam sessions.

Legal context

EU law

The Sixth Directive

3 The seventh recital of the Sixth Directive provides:

'Whereas the determination of the place where taxable transactions are effected has been the subject of conflicts concerning jurisdiction as between the Member States, in particular as regards supplies of goods for assembly and the supply of services; whereas although the place where a supply of services is effected should in principle be defined as the place where the person supplying the services has his principal place of business, that place should be defined as being in the country of the person to whom the services are supplied, in particular in the case of certain services supplied between taxable persons where the cost of the services is included in the price of the goods'.

4 In Title VI, entitled 'Place of taxable transactions', Article 9 of the Sixth Directive, entitled 'Supply of services', is worded as follows:

'1. The place where a service is supplied shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

2. However:

…

(c) the place of the supply of services relating to:

– cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organisers of such activities, and where appropriate, the supply of ancillary services,

…

shall be the place where those services are physically carried out;

…

(e) the place where the following services are supplied when performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides:

…

– electronically supplied services, inter alia, those described in Annex L;

…'

Regulation No 1777/2005

5 Article 11(1) of Regulation No 1777/2005 provided:

'"Electronically supplied services" as referred to in the 12th indent of Article 9(2)(e) of [the Sixth Directive] and in Annex L to [the Sixth Directive] shall include services which are delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and in the absence of information technology is impossible to ensure.'

The VAT Directive

6 From 1 January 2007, the Sixth Directive was repealed and replaced by the VAT Directive.

7 Article 43 of the VAT Directive, which is in Section 1, entitled 'General Rule', of Chapter 3, entitled 'Place of supply of services', which forms part of Title V of the directive, concerning the place of taxable transactions, is worded as follows:

'The place of supply of services shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.'

8 Article 52(a) of that directive, which is in Section 2 of Chapter 3, entitled 'Particular provisions', provides:

'The place of supply of the following services shall be the place where the services are physically carried out:

(a) cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organisers of such activities and, where appropriate, ancillary services'.

9 Article 56(1) of that directive, which is also in Section 2, provides:

‘The place of supply of the following services to customers established outside the Community, or to taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment for which the service is supplied, or, in the absence of such a place, the place where he has his permanent address or usually resides:

…

(k) electronically supplied services, such as those referred to in Annex II’.

Netherlands law

10 Article 6(1), (2)(c)(1) and (d)(10) of the Wet op de omzetbelasting 1968 (Law of 1968 on Turnover Tax), in the version applicable during the period from 1 January 2006 to 31 December 2009, transposed, into Netherlands law, Article 9(1) and (2)(c), 1st indent, and (e), 12th indent, of the Sixth Directive and Article 43, Article 52(a) and Article 56(1)(k) of the VAT Directive.

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 Mr Geelen, who is registered in the Netherlands as a taxable person for VAT purposes, provides for consideration services consisting in the offer of live interactive erotic webcam sessions. The models filmed during those sessions are in the Philippines and work for Mr Geelen. Mr Geelen provides them with the hardware and software required to broadcast those sessions over the internet. To access the sessions at issue in the main proceedings, Mr Geelen’s customers must create an account with one of the internet service providers. Those providers receive the payments for those sessions from the customers and pay a portion of them to Mr Geelen. The sessions are interactive in the sense that each customer has the ability to communicate with the models and to make special requests to them. A single session may be viewed live by several customers simultaneously.

12 Since Mr Geelen did not submit a VAT return in respect of the supply of those services, the Netherlands tax authority, taking the view that those services were subject to VAT in the Netherlands, sent Mr Geelen a notice of additional assessment for the period from 1 June 2006 to 31 December 2009.

13 The Rechtbank Zeeland-West-Brabant (Zeeland-West-Brabant District Court, Netherlands) dismissed the action brought by Mr Geelen against that notice of additional assessment.

14 By judgment of 30 July 2015, the Gerechtshof ’s-Hertogenbosch (Court of Appeal, ’s-Hertogenbosch, Netherlands) annulled that notice on the ground, in essence, that the supply of services at issue constituted an entertainment activity which had to be regarded as being physically carried out by the models concerned in the Philippines.

15 The Staatssecretaris van Financiën has brought an appeal on a point of law against that judgment before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), claiming that the place of supply of those services was the place where the customers were located at the time when they purchased the services concerned, that place being, in the present case, the Netherlands.

16 The referring court considers that the examination of that appeal requires, first of all, an assessment as to whether the supply of services at issue constitutes an ‘entertainment activity’, within the meaning of the first indent of Article 9(2)(c) of the Sixth Directive and Article 52(a) of the VAT Directive.

Admittedly, the purpose of the sessions in question is clearly to entertain the customers and the cost of the various services provided at that time are included in the price paid to access those sessions. The EU legislature specifically adopted the special rule laid down in those provisions for the supply of such complex services. However, it may be inferred from the judgments of 9 March 2006, *Gillan Beach* (C-114/05, EU:C:2006:169), and of 27 October 2011, *Inter-Mark Group* (C-530/09, EU:C:2011:697), that the activity concerned must be carried out over a set period, at a place where the service provider and the recipients physically meet. Nevertheless, the question arises as to whether that requirement applies in the wake of the development of the internet, which now means that services no longer have to be supplied at a specific physical location.

17 Moreover, if the supply of services at issue in the main proceedings is an 'entertainment activity', within the meaning of those provisions, the referring court notes that the place where those services are 'physically carried out', within the meaning of those provisions, must be determined. While that place may, in the referring court's view, be the place where the models perform, the view may also be taken that it is the place where the customer enjoys the entertainment activity, namely the place where he logs onto the session. In the main proceedings in the present case, the customers are all located in the Netherlands. However, since those customers could, in theory, be located anywhere, the referring court states that the question arises as to whether the connection to the place where the customers connect to the internet provides a rule which is applicable in practice and a rational solution for tax purposes.

18 Furthermore, the referring court is uncertain whether the special rule applicable to electronically supplied services, set out in the 12th indent of Article 9(2)(e) of the Sixth Directive and Article 56(1)(k) of the VAT Directive, may also be taken into account. In that regard, it may be inferred from Article 11(1) of Regulation No 1777/2005 that only transactions which require minimal human intervention and which cannot be carried out in the absence of information technology fall into that category of services. According to the referring court, it follows that the supply of services at issue in the main proceedings are not electronically supplied services since the performance of the sessions, because they are broadcast live and are interactive, requires human intervention and the use of the internet.

19 Finally, in the event that that supply of services does fall under the two aforementioned rules, it must be determined, where those rules lead to the designation of different places where the service is deemed to be supplied, which place must be used. Although, according to the referring court, it would appear from the judgment of 6 March 1997, *Linthorst, Pouwels and Scheres* (C-167/95, EU:C:1997:105), that the order in which the situations are listed in Article 9(2) of the Sixth Directive is decisive, that judgment cannot provide any degree of certainty since the supply of services at issue in the case giving rise to that judgment could not be linked to any of the cases referred to in that provision.

20 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) (a) Should the first indent of Article 9(2)(c) of the Sixth Directive … or Article 52(a) of the VAT Directive …, respectively, be interpreted as also covering the provision, in return for payment, of live interactive erotic webcam sessions?

(b) If question 1(a) is answered in the affirmative, should the phrase "the place where those services are physically carried out" in Article 9(2)(c) of the Sixth Directive or "the place where the services are physically carried out" in the introductory sentence of Article 52 of the VAT Directive …, respectively, then be interpreted as meaning that the decisive factor is the place where the models perform in front of the webcamera or the place where the [customers] view the images, or could even some other place be envisaged?

(2) Should the 12th indent of Article 9(2)(e) of the Sixth Directive or Article 56(1)(k) of the VAT Directive …, read in conjunction with Article 11 of [Regulation No 1777/2005], be interpreted as meaning that the provision, in return for payment, of live interactive erotic webcam sessions can be deemed to be an "electronically supplied service"?

(3) If both question 1(a) and question 2 are answered in the affirmative, and the designation of the place of the service according to the relevant provisions of the directives concerned results in a different outcome, how should the place of the service then be determined?'

Consideration of the questions referred

The first question

21 By its first question, the referring court asks, in essence, whether the first indent of Article 9(2)(c) of the Sixth Directive and Article 52(a) of the VAT Directive must be interpreted as meaning that a supply of services, such as that at issue in the main proceedings, consisting in the offer of live interactive erotic webcam sessions, constitutes an 'entertainment activity' within the meaning of those provisions and, if so, where must that supply of services be deemed to be 'physically carried out' within the meaning of those provisions.

22 Since that question has been raised in the context of a tax adjustment concerning the period from 1 June 2006 to 31 December 2009, the provisions of both the Sixth Directive and the VAT Directive are applicable *ratione temporis* to a dispute such as that at issue in the main proceedings.

23 It should be borne in mind that Article 9 of the Sixth Directive contains rules for determining the place where services are deemed to be supplied for tax purposes. Whereas Article 9(1) lays down a general rule on the matter, Article 9(2) sets out a number of specific instances of places where certain services are deemed to be supplied. The object of those provisions is to avoid, first, conflicts of jurisdiction, which may result in double taxation, and, secondly, non-taxation (judgments of 26 September 1996, *Dudda*, C-327/94, EU:C:1996:355, paragraph 20; of 9 March 2006, *Gillan Beach*, C-114/05, EU:C:2006:169, paragraph 14; of 6 November 2008, *Kollektivavtalsstiftelsen TRR Trygghetsrådet*, C-291/07, EU:C:2008:609, paragraph 24; and of 3 September 2009, *RCI Europe*, C-37/08, EU:C:2009:507, paragraph 20).

24 It follows from settled case-law that Article 9(1) of the Sixth Directive in no way takes precedence over Article 9(2). It must be asked, in every situation, whether that situation corresponds to one of the instances mentioned in Article 9(2) of that directive. If not, that situation falls within the scope of Article 9(1) of the directive (judgments of 12 May 2005, *RAL (Channel Islands) and Others*, C-452/03, EU:C:2005:289, paragraph 24; of 9 March 2006, *Gillan Beach*, C-114/05, EU:C:2006:169, paragraph 15; and of 6 November 2008, *Kollektivavtalsstiftelsen TRR Trygghetsrådet*, C-291/07, EU:C:2008:609, paragraph 25).

25 It follows that Article 9(2) of the Sixth Directive must not be regarded as an exception to a general rule which must be narrowly construed (judgment of 27 October 2005, *Levob Verzekeringen and OV Bank*, C-41/04, EU:C:2005:649, paragraph 34).

26 The first indent of Article 9(2)(c) of the Sixth Directive provides that the place of the supply of services relating, inter alia, to 'entertainment or similar activities', including, where appropriate, the supply of ancillary services, is the place where those services are physically carried out. The EU legislature considered that, where the supplier provides his services in the State in which such services are physically carried out and the organiser of the event charges the final consumer VAT in the same State, the VAT charged on the basis of all those services the cost of which is included in the price of

the complete service paid for by that consumer must be paid to that State, regardless of where the supplier of the service has established his business (see, to that effect, judgments of 26 September 1996, *Dudda*, C-327/94, EU:C:1996:355, paragraph 24, and of 9 March 2006, *Gillan Beach*, C-114/05, EU:C:2006:169, paragraphs 18 and 22).

27 Article 9(1) and the first indent of Article 9(2)(c) of the Sixth Directive correspond, respectively, to Article 43 and Article 52(a) of the VAT Directive.

28 Since the wording of the latter provisions is, essentially, identical to that of the corresponding provisions in the Sixth Directive, they must be interpreted in the same way (see, by analogy, judgment of 6 November 2008, *Kollektivavtalsstiftelsen TRR Trygghetsrådet*, C-291/07, EU:C:2008:609, paragraph 23).

29 The first question referred by the national court must be answered in the light of those principles.

30 As regards, in the first place, the nature of the services, it is clear from the actual wording of Article 9(2)(c) of the Sixth Directive that, as the Court has previously held, to fall within the scope of that provision, the principal objective of a supply of services must be, inter alia, entertainment (see to that effect, judgments of 26 September 1996, *Dudda*, C-327/94, EU:C:1996:355, paragraph 26, and of 12 May 2005, *RAL (Channel Islands) and Others*, C-452/03, EU:C:2005:289, paragraph 31).

31 In that regard, the Court has stipulated that no particular artistic level is required and it is not only services relating, inter alia, to entertainment activities, but also services relating merely to similar activities that fall within the scope of Article 9(2)(c) of the Sixth Directive (judgments of 26 September 1996, *Dudda*, C-327/94, EU:C:1996:355, paragraph 25; of 12 May 2005, *RAL (Channel Islands) and Others*, C-452/03, EU:C:2005:289, paragraph 32; and of 9 March 2006, *Gillan Beach*, C-114/05, EU:C:2006:169, paragraph 19).

32 In the present case, it is clear from the information in the order for reference that the supply of services at issue in the main proceedings is complex in nature since it consists of a number of activities. On the one hand, the models in the Philippines participate in erotic shows. On the other hand, those models are the focus of interactive sessions, which are available live on the internet, organised by Mr Geelen from the Netherlands, where he has established his business, the purpose of which is to allow customers not only to view those sessions, but also to interact with the models so that they are able to influence the performance of those shows and to steer them according to their wishes.

33 In that regard, it has been established that those shows are performed by models in the context of an employment relationship between the models and the organiser of the shows. Moreover, since the organiser receives the payment required to view the interactive sessions via internet service providers, with whom the customers must create an account, it is apparent that the organiser has also put into place the technical, organisational and contractual framework required for access to those sessions, which is restricted to those paying customers. In particular, it is apparent from the information before the Court that that organiser provides the models with the software required for internet broadcasts.

34 It follows that the interactive sessions at issue in the main proceedings are not comparable to conventional cultural events, such as a concert, a fair or an exhibition, since, by the service he offers, Mr Geelen is not seeking to provide access to services which are provided at a specific location for a specified period; rather he organises and enables, simultaneously, the creation and broadcast of a category of shows which may take place at any time and in any location, in interactive sessions which are available on the internet.

35 Therefore, in order to determine the nature of the supply of services at issue in the main proceedings, the service concerned, as provided by Mr Geelen, must be assessed.

36 In the present case, it is common ground that the objective of that service is to provide recipients with a source of entertainment.

37 It follows, as the Netherlands and French Governments and the European Commission have submitted, that a supply of services of that kind must be regarded as an 'entertainment activity' that falls within the scope of the first indent of Article 9(2)(c) of the Sixth Directive.

38 It is irrelevant, in that regard, that those entertainment services are not provided in the physical presence of the recipients and that the recipients do not receive those services from a single location.

39 Admittedly, the Court has previously held that the various categories of supplies of services set out in Article 9(2)(c) of the Sixth Directive have, in particular, the common feature that they are usually provided for specific events, and the place where those services are physically carried out is easy to identify, as a rule, since such events take place at specific locations (see, to that effect, judgments of 9 March 2006, *Gillan Beach*, C-114/05, EU:C:2006:169, paragraphs 24 and 25, and of 27 October 2011, *Inter-Mark Group*, C-530/09, EU:C:2011:697, paragraph 23).

40 However, although that is generally the case, nothing in the wording of Article 9(2)(c) of the Sixth Directive is capable of suggesting that the application of that provision is necessarily limited to the supply of services provided for such events only.

41 On the contrary, as is clear from paragraph 30 of this judgment, a supply of services falls within the scope of that provision solely because the principal objective pursued by that supply is, in particular, entertainment and, accordingly, by virtue of its intrinsic nature.

42 Therefore, in the absence of any express provision in Article 9(2)(c) of the Sixth Directive that the place where the entertainment activity is physically carried out must be easily identifiable or specific, it must be concluded that the neither the fact that services are not provided in the physical presence of the recipients, nor the fact that those recipients do not receive those services from a single location are such as to prevent the application of that provision.

43 In those circumstances, it must be determined, in the second place, where a supply of services, such as that at issue in the main proceedings, must be regarded as being 'physically carried out' within the meaning of Article 9(2)(c) of the Sixth Directive.

44 According to the Commission, the place where live interactive erotic webcam sessions, such as those at issue in the main proceedings, are physically carried out necessarily corresponds to the place where the show is physically performed by the models. On the other hand, the Netherlands and French Governments consider that that place, in view of technological developments, must be regarded as being the place where the customer is able to access that show. That latter interpretation is consistent with the underlying logic of VAT rules regarding the place of supply, in accordance with which services must be taxed, as far as possible, at the place where they are used by their recipients.

45 It is true that the models who participate in the show which is the subject of the live interactive erotic webcam sessions at issue in the main proceedings are physically located in the Philippines.

46 However, as noted in paragraphs 32 to 34 above, the supply of services at issue in the main proceedings, which consists in organising and offering live interactive erotic webcam sessions, is a complex supply which is rendered not by the models, but by Mr Geelen, who organises those sessions.

47 As the Advocate General observed in point 50 of his Opinion, since the activities necessary for the supply of those complex services are concentrated in the place from which the provider, on the one hand, organises the interactive sessions relating to the erotic show performed by the models and, on

the other hand, provides customers with the opportunity to view those sessions on the internet, from the place of their choice, and to interact with those models, such a complex supply of services must be regarded as being 'physically carried out', within the meaning of Article 9(2)(c) of the Sixth Directive, in the place where that service is supplied by that provider, namely, in the case in the main proceedings, the place where his business is established: the Netherlands.

48 Although that place of reference corresponds, in the present case, to that identified in Article 9(1) of that directive, it should be recalled that, as noted in paragraph 25 above, Article 9(2) of the Sixth Directive must not be regarded as laying down an exception to a general rule.

49 Therefore, even though the latter provision, as is clear from the seventh recital of the Sixth Directive and as noted by all of the interested parties which have submitted observations in the present proceedings, where appropriate, makes it possible to ensure that the services concerned are subject to the VAT regime of the Member State in the territory of which those services are used by their recipients (see, to that effect, judgment of 12 May 2005, *RAL (Channel Islands) and Others*, C-452/03, EU:C:2005:289, paragraph 33), the fact remains that there is nothing to suggest that the place where the services at issue in the main proceedings are physically carried out may not be the same, in the light of the circumstances of the case, as the Member State in which the supplier of the services is established.

50 That interpretation applies a fortiori in the circumstances of the main proceedings in the present case, in so far as it provides a useful point of reference which leads to a rational result for tax purposes (see, to that effect, judgment of 4 July 1985, *Berkholz*, 168/84, EU:C:1985:299, paragraphs 17 and 18).

51 Such an interpretation is consistent with the objective pursued by Article 9 of the Sixth Directive, which, as pointed out in paragraph 23 above, is to lay down a conflict of laws rule to avoid the risk of double taxation or non-taxation, and facilitates the implementation of the conflict of laws rule laid down in Article 9(2)(c) of the Sixth Directive, in that it serves the interests of simplicity of administration — of the rules on the place of supply of services — as regards the rules governing the collection of taxes (see, by analogy, judgment of 6 November 2008, *Kollektivavtalsstiftelsen TRR Trygghetsrådet*, C-291/07, EU:C:2008:609, paragraphs 30 and 31).

52 Moreover, having regard to the fact pointed out by the referring court, mentioned in paragraph 17 above, that all of Mr Geelen's customers are in the Netherlands, it is apparent that, in the present case, that interpretation also makes it possible to ensure that the services concerned are subject to the VAT regime of the Member State in the territory of which those services are used by their recipients.

53 In the light of the foregoing considerations, the answer to the first question is that the first indent of Article 9(2)(c) of the Sixth Directive and Article 52(a) of the VAT Directive must be interpreted as meaning that a complex supply of services, such as that at issue in the main proceedings, consisting in the offer of live interactive erotic webcam sessions constitutes an 'entertainment activity' within the meaning of those provisions, which must be regarded as being 'physically carried out' within the meaning of those provisions at the place where the supplier has established his business or a fixed establishment from which those services are supplied or, in the absence of such a place, the place where he has his permanent address or usually resides.

The second question

54 By its second question, the referring court asks, in essence, whether the 12th indent of Article 9(2)(e) of the Sixth Directive and Article 56(1)(k) of the VAT Directive, read in conjunction with Article 11 of Regulation No 1777/2005, must be interpreted as meaning that a supply of services, such as that at issue in the main proceedings, consisting in the offer of live interactive erotic webcam sessions must be deemed to relate to an 'electronically supplied service' within the meaning of those provisions.

55 It should be noted that the 12th indent of Article 9(2)(e) of the Sixth Directive determines the place of supply of electronically supplied services, as regards the services referred to in Annex L to that directive and in Article 11 of Regulation No 1777/2005, where those services are supplied to recipients established outside the European Union or to taxable persons established in the European Union but not in the same country as the supplier.

56 The 12th indent of Article 9(2)(e) of the Sixth Directive corresponds to Article 56(1)(k) of the VAT Directive. Since the wording of those provisions is, in essence, identical, they must, in accordance with the case-law cited in paragraph 28 above, be interpreted in the same way.

57 However, it is clear from the information in the order for reference, referred to in paragraph 17 above, that the services at issue in the main proceedings were supplied to customers who were all located in the Netherlands.

58 In those circumstances, there being no need to determine whether a service such as that at issue in the main proceedings must be regarded as an 'electronically supplied service' referred to in Annex L to the Sixth Directive and in Article 11 of Regulation No 1777/2005, it must be held that the 12th indent of Article 9(2)(e) of that directive is not intended to apply in a case such as that in the main proceedings.

59 Consequently, the answer to the second question is that the 12th indent of Article 9(2)(e) of the Sixth Directive and Article 56(1)(k) of the VAT Directive, read in conjunction with Article 11 of Regulation No 1777/2005, must be interpreted as meaning that a supply of services, such as that at issue in the main proceedings, consisting in the offer of live interactive erotic webcam sessions does not fall within the scope of those provisions where those services have been supplied to recipients who are all located in the Member State of the supplier of those services.

The third question

60 In the light of the answer to the second question, there is no need to answer the third question.

Costs

61 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **The first indent of Article 9(2)(c) of 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, 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 supply of services, such as that at issue in the main proceedings, consisting in the offer of live interactive erotic webcam sessions constitutes an 'entertainment activity', within the meaning of those provisions, which must be regarded as being 'physically carried out' within the meaning of those provisions at the place where the supplier has established his business or a fixed establishment from which those services are supplied or, in the absence of such a place, the place where he has his permanent address or usually resides.**

2. **The 12th indent of Article 9(2)(e) 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, consisting in the offer of live interactive erotic webcam sessions does not fall within the scope of those provisions where those services have been supplied to recipients who are all located in the Member State of the supplier of those services.**

[Signatures]