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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 1 December 2022 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Kiel v Norddeutsche Gesellschaft für Diakonie mbH

(Case C-141/20) ⁽¹⁾

(Reference for a preliminary ruling — Value added tax (VAT) — Sixth Directive 77/388/EEC — Second subparagraph of Article 4(4) — Taxable persons — Option for Member States to treat as a single taxable person entities that are legally independent but closely bound to one another by financial, economic and organisational links ('VAT group') — National legislation designating the controlling company of a VAT group as a single taxable person — Concept of 'close financial links' — Need for the controlling company to have a majority of voting rights as well as a majority shareholding — No need — Assessment of the independence of an economic entity in the light of standardised criteria — Scope)

(2023/C 35/02)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Kiel

Defendant: Norddeutsche Gesellschaft für Diakonie mbH

Operative part of the judgment

1. The second subparagraph of Article 4(4) 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 2000/65/EC of 17 October 2000,

must be interpreted as not precluding a Member State from designating, as a single taxable person of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links, the controlling company of that group, where that controlling company is in a position to impose its will on the other entities forming part of that group and provided that that designation does not entail a risk of tax losses.

2. The second subparagraph of Article 4(4) of Sixth Directive 77/388, as amended by Directive 2000/65,

must be interpreted as precluding national legislation which makes the possibility for a given entity to form, with the undertaking of the controlling company, a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links conditional upon that controlling company having, in that entity, a majority of the voting rights in addition to a majority holding in the share capital of that entity.

3. The second subparagraph of Article 4(4) of Sixth Directive 77/388, as amended by Directive 2000/65, read in conjunction with the first subparagraph of Article 4(1) of Directive 77/388, as amended,

must be interpreted as precluding a Member State from classifying, by categorisation, given entities as non-independent, where those entities are integrated, in financial, economic and organisational terms, into the controlling company of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links.

⁽¹⁾ OJ C 222, 6.7.2020.

Judgment of the Court (First Chamber) of 1 December 2022 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt T v S

(Case C-269/20) ⁽¹⁾

(Reference for a preliminary ruling — Value added tax (VAT) — Sixth Directive 77/388/EEC — Second subparagraph of Article 4(4) — Taxable persons — Option for Member States to treat as a single taxable person persons who are legally independent but closely bound to one another by financial, economic and organisational links ('VAT group') — National legislation designating the controlling company of a VAT group as a single taxable person — Internal supplies within the VAT group — Article 6(2)(b) — Supplies of services provided free of charge — Concept of 'purposes other than those of the business')

(2023/C 35/03)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt T

Defendant: S

Operative part of the judgment

1. The second subparagraph of Article 4(4) 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,

must be interpreted as not precluding a Member State from designating, as a single taxable person of a group formed by persons who are legally independent but closely bound to one another by financial, economic and organisational links, the controlling company of that group, where that controlling company is in a position to impose its will on the other entities forming part of that group and provided that that designation does not entail a risk of tax losses.