

3. In the event that Question 1 is answered in the affirmative: is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes to be interpreted as covering only 'take away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?

(¹) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 December 2009 — Hans-Joachim Flebbe Filmtheater GmbH & Co. KG v Finanzamt Hamburg-Barmbek-Uhlenhorst

(Case C-499/09)

(2010/C 63/35)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hans-Joachim Flebbe Filmtheater GmbH & Co. KG

Defendant: Finanzamt Hamburg-Barmbek-Uhlenhorst

Questions referred

- Does the sale of dishes or meals prepared for immediate consumption constitute a supply of goods within the meaning of Article 5 of Sixth Council Directive 77/388/EEC (¹) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes?
- Does the answer to Question 1 depend on whether additional service elements are supplied (the provision, for use, of tables, chairs and other facilities for consumption, the experience of a visit to the cinema)?
- In the event that Question 1 is answered in the affirmative: is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of

17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes to be interpreted as covering only 'take away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?

(¹) OJ 1977 L 145, p. 1

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 December 2009 — Lothar Lohmeyer v Finanzamt Minden

(Case C-501/09)

(2010/C 63/36)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Lothar Lohmeyer

Defendant: Finanzamt Minden

Questions referred

- Is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (¹) to be interpreted as covering only 'take-away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?
- In the event that 'foodstuffs for human consumption' within the meaning of Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes also covers dishes or meals for immediate consumption:

Is the first subparagraph of Article 6(1) 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 to be interpreted as covering the sale of freshly prepared dishes or meals which the customer does not take away, but consumes on the spot making use of facilities for consumption such as counters, tables for standing at or the like?

(¹) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 December 2009 — Fleischerei Nier GmbH & Co. KG v Finanzamt Detmold

(Case C-502/09)

(2010/C 63/37)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Fleischerei Nier GmbH & Co. KG

Defendant: Finanzamt Detmold

Questions referred

1. Is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (¹) to be interpreted as covering only 'take-away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?
2. In the event that 'foodstuffs for human consumption' within the meaning of Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes also covers dishes or meals for immediate consumption:

Is the process of the preparation of the dishes or meals to be taken into account as a service element if it has to be decided whether the single supply of a party-service business

(provision of dishes or meals ready for consumption together with the transport thereof and, perhaps, the provision of cutlery and crockery and/or tables for standing at as well as the collection of the objects provided for use) is to be classified as a supply of foodstuffs that is subject to a reduced rate of taxation (Category 1 of Annex H to that directive) or as a supply of services not subject to a reduced rate of taxation (Article 6(1) of that directive)?

3. In the event that Question 2 is answered in the negative:

Is it consistent with Article 2(1), in conjunction with Articles 5(1) and 6(1), 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 for the classification of the single supply of a party-service business as either a supply of goods or a *sui generis* supply of services to be based purely on the number of the elements in the nature of supplies of services (two or more) compared with the proportion constituted by the supply of goods, or must the elements in the nature of a supply of services necessarily be assessed independently of their number, and, if so, according to what criteria?

(¹) OJ 1977 L 145, p. 1.

Appeal brought on 4 December 2009 by the European Commission against the judgment delivered on 23 September 2009 in Case T-263/07 European Commission v Republic of Estonia

(Case C-505/09 P)

(2010/C 63/38)

Language of the case: Estonian

Parties

Appellant: European Commission (represented by E. Kružíková, E. White and E. Randvere, acting as Agents)

Other parties to the proceedings: Republic of Estonia, Republic of Lithuania, Slovak Republic, United Kingdom of Great Britain and Northern Ireland

Form of order sought

— set aside the contested judgment;

— order the Republic of Estonia to pay the costs.