



Reports of Cases

Case C-549/11

Direktor na Direktsia 'Obzhalvane i upravlentie na izpalnenieto' — grad Burgas pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

v

Orfey Balgaria EOOD

(Reference for a preliminary ruling from the Varhoven administrativen sad)

(VAT — Directive 2006/112/EC — Articles 63, 65, 73 and 80 — Establishment by natural persons of a building right in favour of a company in exchange for construction services by that company for those persons — Barter contract — VAT on construction services — Chargeable event —

When chargeable — Payment on account of the entire consideration — Payment on account — Basis of assessment for a transaction in the event of consideration in the form of goods or services — Direct effect)

Summary — Judgment of the Court (Eighth Chamber), 19 December 2012

1. *Harmonisation of fiscal legislation — Common system of value added tax — Chargeable event and chargeability of the tax — Payments on account made before the supply of goods or services — Definition — Payment on account made in kind — Included — Condition — Payment on account corresponding to the entire consideration agreed upon — No effect*

(Council Directive 2006/112, Art. 65)

2. *Harmonisation of fiscal legislation — Common system of value added tax — Chargeable event and chargeability of the tax — Supply of goods or services — Establishment of a building right in order to erect a building by way of consideration for construction services of real property which are to form part of that building — Tax on those construction services chargeable as from the establishment of the building right — Lawfulness — Conditions — Verification a matter for the national court*

(Council Directive 2006/112, Arts 63 and 65)

3. *Harmonisation of fiscal legislation — Common system of value added tax — Taxable amount — Supply of goods or services — Transaction between persons having ties — Option for the Member States to use, as the taxable amount, the open market value of the transaction — Consideration for a transaction between persons not having ties being made up entirely of goods or services — National legislation providing that the taxable amount is the open market value of the goods or services supplied — Unlawful*

(Council Directive 2006/112, Arts 73 and 80)

4. *Harmonisation of fiscal legislation — Common system of value added tax — Chargeable event and chargeability of the tax — Taxable amount — Supply of goods or services — Articles 63, 65 and 73 of Directive 2006/112 — Direct effect*

(Council Directive 2006/112, Arts 63, 65 and 73)

1. See the text of the decision.

(see paras 35-37)

2. Articles 63 and 65 of Directive 2006/112/EC on the common system of value added tax must be interpreted as meaning that, where a building right is established in favour of a company in order to erect a building, by way of consideration for construction services of certain real property in that building and that company has undertaken to deliver on a turn-key basis to the persons who established that building right, they do not preclude the value added tax on those construction services from becoming chargeable as from the moment when the building right is established, that is to say, before those services are performed, provided that, at the time that right is established, all the relevant information concerning that future supply of services is already known and, therefore, in particular, the services in question are precisely identified, and the value of that right may be expressed in monetary terms, which it is for the national court to verify.

The fact that the building right may be extinguished by reason of a limitation period provided for by the national legislation has no effect on that interpretation. Since that possibility constitutes a mere cancellation condition for the purposes of Article 90(1) of the Directive, the fact that such a condition may potentially be relied on in the future does not cast doubt on the fact that the transaction is completed at the time the building right is established if, at that time, all the relevant information concerning that future supply of services is already known and, therefore, in particular, the services in question are precisely identified.

Furthermore, in order to determine whether the conditions for chargeability of the value added tax owing on such a future supply of services are satisfied, it does not matter whether the consideration for that future supply of services itself constitutes a transaction which is subject to tax. In order for the value added tax owing on such a future supply of services to become chargeable, it is sufficient that all the relevant information concerning that future supply of services is already known and that the value of the corresponding consideration may be expressed in monetary terms.

(see paras 38-40, operative part 1)

3. If a supply of goods or services is not completed between parties having ties within the meaning of Article 80 of Directive 2006/112 on the common system of value added tax, Articles 73 and 80 of that directive must be interpreted as precluding a national provision under which, when the consideration for a transaction is made up entirely of goods or services, the taxable amount of the transaction is the open market value of the goods or services supplied.

The conditions of application laid down in Article 80(1) of the Directive are exhaustive and, consequently, national legislation cannot on the basis of that provision provide that the taxable amount is to be the open market value of the transaction in cases other than those listed in that provision.

(see paras 47-49, operative part 2)

4. See the text of the decision.

(see para. 54, operative part 3)