

2. Orders Ludwig-Bölkow-Systemtechnik GmbH to pay the costs.

⁽¹⁾ OJ C 222, 20.6.2016.

Judgment of the Court (Fourth Chamber) of 22 November 2017 (request for a preliminary ruling from the Supreme Court — Ireland) — Edward Cussens, John Jennings, Vincent Kingston v T. G. Brosnan

(Case C-251/16) ⁽¹⁾

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Sixth Directive 77/388/EEC — Article 4(3)(a) and Article 13B(g) — Exemption of the supply of buildings, and of the land on which they stand, other than as described in Article 4(3)(a) — Principle that abusive practices are prohibited — Applicability in the absence of national provisions transposing that principle — Principles of legal certainty and of the protection of legitimate expectations)

(2018/C 022/12)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Appellants: Edward Cussens, John Jennings, Vincent Kingston

Respondent: T.G. Brosnan

Operative part of the judgment

1. The principle that abusive practices are prohibited must be interpreted as being capable, regardless of a national measure giving effect to it in the domestic legal order, of being applied directly in order to refuse to exempt from value added tax sales of immovable goods, such as the sales at issue in the main proceedings, carried out before the judgment of 21 February 2006, Halifax and Others (C-255/02, EU:C:2006:121), was delivered, and the principles of legal certainty and of the protection of legitimate expectations do not preclude this.
2. 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 meaning that, if the transactions at issue in the main proceedings should be redefined pursuant to the principle that abusive practices are prohibited, those of the transactions which do not constitute such a practice may be subject to value added tax on the basis of the relevant provisions of national legislation providing for such liability.
3. The principle that abusive practices are prohibited must be interpreted as meaning that, in order to determine, on the basis of paragraph 75 of the judgment of 21 February 2006, Halifax and Others (C-255/02, EU:C:2006:121), whether the essential aim of the transactions at issue in the main proceedings is to obtain a tax advantage, account should be taken of the objective of the leases preceding the sales of immovable property at issue in the main proceedings in isolation.
4. The principle that abusive practices are prohibited must be interpreted as meaning that supplies of immovable property such as those at issue in the main proceedings are liable to result in the accrual of a tax advantage contrary to the purpose of the relevant provisions of Sixth Directive 77/388 where the properties had, before their sale to third party purchasers, not yet been actually used by their owner or their tenant. It is for the referring court to verify whether that is the case in the main proceedings.

5. The principle that abusive practices are prohibited must be interpreted as being applicable in a situation such as that at issue in the main proceedings, which concerns the possible exemption of a supply of immovable property from value added tax.

⁽¹⁾ OJ C 243, 4.7.2016.

Judgment of the Court (First Chamber) of 23 November 2017 (reference for a preliminary ruling from the Helsingin hallinto-oikeus) — Proceedings brought by A Oy

(Case C-292/16) ⁽¹⁾

(Reference for a preliminary ruling — Freedom of establishment — Direct taxation — Corporation tax — Directive 90/434/EEC — Article 10(2) — Transfer of assets — Non-resident permanent establishment transferred, in the course of a transfer of assets, to a receiving company also non-resident — Right of the Member State of the transferring company to tax that establishment's profits or capital gains resulting from the transfer of assets — National legislation providing for immediate taxation of the profits or capital gains in the year of transfer — Collection of the tax due as revenue of the tax year in which the transfer of assets took place)

(2018/C 022/13)

Language of the case: Finnish

Referring court

Helsingin hallinto-oikeus

Parties to the main proceedings

A Oy

Operative part of the judgment

Article 49 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, where a resident company, in the course of a transfer of assets, transfers a non-resident permanent establishment to a company that is also non-resident, first, provides for the immediate taxation of the capital gains resulting from the transfer and, second, does not allow deferred collection of the tax, whereas in an equivalent national situation such capital gains are not taxed until the disposal of the transferred assets, in so far as that legislation does not allow the deferred collection of the tax.

⁽¹⁾ OJ C 270, 25.7.2016.

Judgment of the Court (Second Chamber) of 16 November 2017 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Kozuba Premium Selection sp. z o.o. v Dyrektor Izby Skarbowej w Warszawie

(Case C-308/16) ⁽¹⁾

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 12(1) and (2) — Article 135(1)(j) — Taxable transactions — Exemption for the supply of buildings — Concept of 'first occupation' — Concept of 'conversion')

(2018/C 022/14)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny