Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 10 January 2019 [1]

Case C-647/17

Skatteverket
v
Srf konsulterna AB

(Request for a preliminary ruling from the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden))

(Reference for a preliminary ruling — Common system of value added tax — Place of taxable transactions — Services offered to taxable persons — Supply of services in respect of admission to educational events — Seminar taking place in a Member State where neither supplier nor participants are established — Seminar requiring advance registration and payment)

1. By this request for a preliminary ruling the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) asks the Court for guidance as to whether a seminar organised by a taxable person established in Sweden for participants who themselves are taxable persons established in Sweden, but taking place in another Member State, should be subject to VAT in Sweden or in that other Member State. Should the place of supply of such a seminar be determined in accordance with Article 44 of Directive 2006/112/EC [2] or Article 53 of that directive?

2. The Court is thus called upon for the first time to examine and define the material scope of Article 53 in relation to services supplied to taxable persons consisting of admission to educational events within the meaning of that provision. The Court's answer is likely to have a decisive impact on determining the place of supply of services (including ancillary services related to admission) in respect of other categories of events referred to in Article 53 that is to say 'cultural, artistic, sporting, scientific, educational, entertainment or similar events' (ranging from tennis tournaments to trade fairs, arts exhibitions to music concerts). To take a very specific example, it may thus provide guidance for determining the place of supply of a major international event such as the forthcoming EURO 2020 football championships. [3]

1 Original language: English.

2 Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

3 The relevant features of that event appear to be the following: it is composed of a series of autonomous events (football matches), taking place in different Member States or outside the EU, for which the tickets are nominative and are sold by different taxable persons through a complex distribution system.

EU law

Directive 2006/112

3. Article 44 of Directive 2006/112 provides that 'the place of supply of services to a taxable person acting as such shall be the place where that person has established his business'. [4]

4. Article 53 states that in the case of supplies to a taxable person, 'the place of supply of services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events, such as fairs and exhibitions, and of ancillary services related to the admission … shall be the place where those events actually take place'.

5. Article 54(1) provides that in respect of supplies to a non-taxable person 'the place of supply of services and ancillary services, relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the supply of services of the organisers of such activities … shall be the place where those activities actually take place'.

6. Pursuant to Article 132(1)(i), Member States are to exempt from VAT 'the provision of … vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects'.

Regulation No 282/2011

7. Article 32(1) of Regulation No 282/2011 [5] provides that Article 53 of Directive 2006/112 should apply in particular to 'the supply of services of which the essential characteristics are the granting of the right of admission to an event in exchange for a ticket or payment, including payment in the form of a subscription, a season ticket or a periodic fee'.

8. Article 32(2) states that such services include in particular: '(a) the right of admission to shows, theatrical performances, circus performances, fairs, amusement parks, concerts, exhibitions, and other similar cultural events; (b) the right of admission to sporting events such as matches or competitions; and (c) the right of admission to educational and scientific events such as conferences and seminars'.

9. In accordance with Article 32(3), the use of facilities such as gymnastics halls and suchlike, in exchange for the payment of a fee, does not fall within Article 32(1).

10. Article 33 provides that 'the ancillary services referred to in Article 53 of Directive 2006/112/EC shall include services which are directly related to admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events and which are supplied separately for a consideration to a person attending an event'. It further specifies that 'such ancillary services shall include in particular the use of cloakrooms or sanitary facilities but shall not include mere intermediary services relating to the sale of tickets'.

4 The version of Directive 2006/112 as amended by Council Directive 2008/8/EC of 12 February 2008 amending the VAT Directive as regards the place of supply of services (OJ 2008 L 44, p. 11) was the version applicable at the material time.

5 Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112 (OJ 2011 L 77, p. 1).

National law

11. Under Chapter 5, Paragraph 5, of the mervärdesskattelagen 1994:200 (Law No 1994:200 on value added tax),[6] a service which is supplied to a taxable person is sold in Sweden if the taxable person has either established his business in Sweden or has a fixed establishment there to which the service in question was supplied.

12. Pursuant to Paragraph 11a in Chapter 5 of the Law on VAT, a service in the form of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events, such as fairs and exhibitions, supplied to a taxable person, is considered to be sold in Sweden if the event actually takes place in Sweden. The same holds good as regards ancillary services related to the admission.

Facts, procedure and the question referred

13. Srf konsulterna AB ('Srf konsulterna') is a company established in Sweden, wholly owned by a professional association for accounting, management and salary consultants. It provides educational and vocational training to consultants in return for a fee.

14. The referring court states that amongst other activities, Srf konsulterna provides seminars lasting for 30 hours spread over five days with one day's break in the middle. Those seminars are made available only to professionals established or having a fixed establishment in Sweden, regardless of whether they are members of Srf konsulterna's parent professional association. The syllabus is decided in advance and assumes that participants have prior knowledge and experience of accountancy issues, although it can be adapted depending on the level of competence of those who actually attend. Seminars take place in a conference facility.

15. Participants must register in advance and have been accepted before the start of the course. Thus, Srf konsulterna has access to information on participants' identity, such as their names, addresses, personal identification numbers or registration numbers.[7] Payment is made in advance.

16. Some of Srf konsulterna's seminars take place in various locations in Sweden, whilst others are held in other Member States.

17. It is with respect to the latter ('the seminars at issue') that Srf konsulterna requested Skatterättsnämnden (the Revenue Law Commission, Sweden) to rule on whether the place of supply should be considered to be Sweden or the Member State where the seminar took place.

18. The Skatterättsnämnden held that such seminars are to be regarded as supplied in Sweden — even if they physically take place abroad. Accordingly, Article 44 rather than Article 53 applies, with the result that the VAT is chargeable in Sweden.

19. The Skatteverket (Swedish local tax administration) did not agree with the grounds given in that decision and lodged an appeal against that ruling before the Högsta förvaltningsdomstolen (Supreme Administrative Court).

6 'The Law on VAT'.

7 'The fiscal identification data'.

20. Taking the view that the meaning of Article 53 of Directive 2006/112 and its relationship to Article 44 of that directive were not entirely clear, the referring court stayed the proceedings and referred the following question to this Court:

'Must the expression "admission to events" in Article 53 of [Directive 2006/112] be interpreted as meaning that it covers a service in the form of a five-day course on accountancy which is supplied solely to taxable persons and requires advance registration and payment?'

21. The Skatteverket, France, the United Kingdom and the Commission submitted written observations. At the hearing on 18 October 2018, Sweden and the Commission made oral submissions.

Assessment

Preliminary remarks

22. The referring court seeks to ascertain whether the supply of services, such as those at issue in the main proceedings, falls within the scope of Article 53 of Directive 2006/112. The answer to the question referred thus turns on whether the seminars organised by Srf konsulterna in Member States other than Sweden can be classified as the supply of services 'in respect of admission to … educational … events' within the meaning of Article 53 of Directive 2006/112.

23. As a preliminary point, I note that it is common ground that the supplies at issue in the main proceedings constitute services rather than goods. It is also common ground that those services are made exclusively to taxable persons. Equally clearly, the order for reference reveals that the services supplied by Srf konsulterna are educational in nature. Thus, Articles 44 and 53 are indeed the provisions that are potentially relevant for determining the place of supply.

24. If the answer to the question referred is that what is provided is 'admission to events' within the meaning of Article 53 of Directive 2006/112, since the seminars at issue take place in a Member State other than Sweden, the place of supply would be considered to be that other Member State.[8] If the provision of those services is not covered by Article 53, then since the participants in the seminars at issue are all established in Sweden, the place of supply would be Sweden, in accordance with Article 44 thereof.[9]

25. The Court has consistently held that the purpose of the provisions determining the place where supplies of services are taxed is to avoid, first, conflicts of jurisdiction which may result in double taxation, and, secondly, non-taxation of the service in question.[10] The Court's answer will thus determine which of the Member States concerned is competent to require the taxable persons concerned to account for VAT in respect of the seminars at issue in accordance with the rates and procedures applicable in that Member State.

26. Since it seems that the purpose of the seminars at issue is to help consultants to keep their accountancy knowledge up to date,[11] they are likely to constitute 'vocational training or retraining' within the meaning of Article 132(1)(i) of Directive 2006/112. Potentially therefore, they might be subject to the mandatory exemption from VAT provided for in that provision. The Commission suggested at the hearing that that provision was not relevant. That may be because Srf konsulterna

8 See points 16 and 17 above.

9 See points 13 and 14 above.

10 Judgment of 8 December 2016, *A and B*, C-453/15, EU:C:2016:933, paragraph 24.

11 See point 14 above.

did not appear to be a body governed by public law whose aim is to provide vocational training within the meaning of Article 132(1). However, that provision would only not be relevant if Srf konsulterna — apart from not being such a public law body — is *also* not an organisation '… recognised by the Member State concerned as having similar objects' within the meaning of that provision in any of the Member States in which it provides the seminars at issue.[12] As there is no material before the Court to assist on this point, I shall not discuss it further.

The substance

27. Whilst Article 44 of Directive 2006/112 contains a general rule for determining the place where services to taxable persons are supplied for tax purposes, Article 53 makes specific, different provision in the case of, inter alia, educational services.

28. It follows from settled case-law that the general rule for determining the place of supply does not take precedence over specific rules. In each case, it must be determined whether that situation corresponds to one of the specific cases listed in Directive 2006/112 (such as Article 53). If not, it will fall within the scope of Article 44. Those specific rules are not to be regarded as exceptions to a general rule, which would therefore have to be narrowly construed.[13] Rather, Article 44 should be regarded as a fall-back or catch-all clause, applicable where no specific rule applies.

29. The Court has previously held that the underlying logic of the provisions concerning the place where a service is supplied for VAT purposes requires that goods and services are taxed as far as possible at the place of consumption.[14]

30. That ruling confirms the approach taken in the Commission's proposal concerning the place of supply of services, which led to the adoption of the rules in their current form. The Commission there stated that any modification of the rules governing the place of taxation of services should result, to the greatest extent possible, in taxation at the place where the actual consumption takes place.[15] To that end, the Commission proposed amending the rules governing the place of supply of services to taxable persons, by generally making such services taxable in the Member State where the *customer* is established,[16] rather than in the Member State where the *supplier* is established.[17]

31. Educational services are by definition essentially intellectual and thus intangible in nature. It might therefore perhaps be possible to regard such services as being economically 'consumed' by taxable persons when they provide (output) supplies to their customers and thus in the Member State where those taxable persons are established. Such an interpretation would favour applying Article 44.

12 Judgment of 28 November 2013, *MDDP*, C-319/12, EU:C:2013:778, paragraphs 35 to 39.

13 Judgment of 8 December 2016, *A and B*, C-453/15, EU:C:2016:933, paragraphs 18 and 19.

14 Judgment of 8 December 2016, *A and B*, C-453/15, EU:C:2016:933, paragraph 25.

15 Proposal for a Council Directive amending Directive 77/388/EEC as regards the place of supply of services, COM(2003) 822, Section 3.

16 Amended proposal for a Council Directive amending Directive 77/388/EEC as regards the place of supply of services, COM(2005) 334, Section 1, p. 2. That objective is reflected in recital 4 of Directive 2008/8, which states that the general rule in that regard 'should be based on the place where the recipient is established, rather than where the supplier is established'.

17 Such was the general rule pursuant to, first, Article 9(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 — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) and later Article 43 of Directive 2006/112 in its initial version. That rule remained in force until 31 December 2009.

32. However, a service in respect of educational *events* constitutes a single, albeit composite, supply whose essential elements — such as the contribution of a teacher or lecturer, the venue and all the facilities and ancillary services 'consumed' on the spot — present a close physical link with the place where the event actually happens.[18] That appears to favour taxation of those supplies, taken as a whole, in the place of consumption in the physical meaning of that term; and as a result speaks for applying Article 53.

33. It follows in my view that no obvious 'rule of thumb' as to the respective positions of Articles 44 and 53 can be inferred from the general objective that services supplied to taxable persons should be taxed in the place of their consumption. In particular, that objective as reflected in recital 6 of Directive 2008/8[19] does not point clearly towards a particularly broad or strict interpretation of either article.

34. I shall therefore now first examine the scope of application of the specific rule set out in Article 53 of Directive 2006/112 and then try to provide the referring court with guidance as to whether the services at issue fall within that provision. If they do not, they should be subject to the general rule set out in Article 44 of that directive.

Article 53 of Directive 2006/112

35. At the crux of this case is the notion of the supply of services 'in respect of admission to … educational … events' within the meaning of Article 53 of Directive 2006/112. Since it is not contested that the seminars at issue are 'educational' in nature, I shall analyse the remaining key concepts of 'event' and 'admission'.

36. What is an educational '*event*' for the purposes of that provision?

37. That concept is not defined in the directive. However, Article 32(2)(c) of Regulation No 282/2011[20] refers in general terms to 'educational and scientific conferences and seminars' as such as examples of events falling within the scope of Article 53 of Directive 2006/112, which suggests that the legislature intended the scope of that concept to be relatively broad.

38. The Oxford Dictionary[21] defines 'event' as 'a thing that happens or takes place, especially one of importance' and more specifically as 'a planned public or social occasion'. The language versions of Directive 2006/112 which I have been able to verify use equivalent words that have a very similar, broad, functional meaning.[22]

39. An event for the purpose of Article 53 must therefore be planned in advance. Conceptually, I see it as an indivisible whole in terms of content, place and time. Naturally, an activity having a predefined agenda and specific subject matter is more likely to qualify as an event than an open-ended activity providing only a general framework for an educational service.

18 The Court has consistently held that a transaction is a single supply where, in particular, two or more components or acts supplied by the taxable person are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (see, for example, judgment of 10 November 2016, *Baštová*, C-432/15, EU:C:2016:855, paragraph 70). For an overview of the case-law on 'composite supplies' and their fiscal treatment under Directive 2006/112, see Opinion of Advocate General Kokott in *Talacre Beach Caravan Sales*, C-251/05, EU:C:2006:295, point 27 et seq.

19 That recital states the rules for determining the place of supply of services to taxable persons should 'reflect the principle of taxation at the place of consumption'.

20 That regulation was adopted on the basis of Article 397 of Directive 2006/112. It is intended to ensure uniform application of the VAT system by laying down rules implementing the provisions of Directive 2006/112 in cases where the application of the latter has led or is liable to lead to divergences which are incompatible with the proper functioning of the internal market (recitals 2 and 4).

21 See online https://en.oxforddictionaries.com/.

22 See the following language versions: CZ: akce; DE: Veranstaltung; ES: manifestacione; FR: manifestation; IT: manifestazione; NL: evenement; PL: impreza; and PT: manifestaçõe. The Swedish language version of Article 53 contains two notions of very similar meaning. These are 'arrangemang' and 'evenemang'.

40. Furthermore, an event should be construed as a gathering of persons to observe or participate in an activity over a period of time. I tend to agree with the United Kingdom that Article 53 therefore only covers activities which involve the physical presence of the customer. That conclusion is confirmed by Article 33 of Regulation No 282/2011, which refers to 'a *person attending* an event' (emphasis added).

41. Time is also a significant factor. The duration of a service should normally enable one to distinguish between educational events and other educational activities. A conference or seminar typically lasts from several hours to several days; whereas a university course is likely to run for a significantly longer period (for example three weeks, a month, a semester, an academic year). It seems to me that the former will be likely to fall within Article 53 whereas the latter will not. The reference to 'payment in the form of a subscription, a season ticket or a periodic fee' in Article 32(1) of Regulation No 282/2011 suggests that a series of autonomous events may also constitute an event for the purpose of Article 53 of Directive 2006/112. In contrast, a series of training sessions forming a whole and spread over several weeks or a language course that runs for a trimester do not seem readily to fit the natural meaning of the term 'event'. Rather, they should be classified as continuing education — that is a type of educational activity falling within the scope of Article 44.

42. Whether an activity is continuous or is divided into several parts or sessions may also provide an indication as to its classification for tax purposes. To me an event is, as a matter of principle, an uninterrupted activity. Where a course or training period exceeds the duration of one day, it is more likely to fall within Article 53 if it takes place over several consecutive days. However, a day's break in the middle does not to my mind automatically disqualify such an activity as an event. In contrast, a course lasting several weeks or more, divided into a number of parts including several breaks, is less likely to qualify as an event. If, additionally, such a course requires significant preparation from participants before or between each individual session — in particular where there is a test or another form of performance appraisal at the end of each such session — this would appear to fall readily within the notion of an extensive or continuing training activity and thus is even less likely to qualify as an event.

43. It follows logically that it is not possible to specify a single criterion fixing an exact maximum duration for an event within the meaning of Article 53. Rather, a number of features need to be assessed together on a case-by-case basis.

44. I therefore consider that Article 53 of Directive 2006/112 covers indivisible educational activities planned in advance that take place at a specific place and over a short period of time and that concern a predefined subject matter. Conversely, educational activities lacking one or more of those characteristics, such as a series of separate meetings or workshops taking place at different dates or locations, courses scheduled over a prolonged period of time or open-ended cycles of meetings, especially if their programme or agenda are not defined in advance, fall outwith that notion.

45. In construing Article 53 it is also necessary to determine the meaning of the term '*admission*'. Article 32(1) of Regulation No 282/2011 explains that only the services 'of which the essential characteristics are the granting of the right of admission to an event' fall within the scope of Article 53 of Directive 2006/112.

46. A linguistic analysis of the term 'admission' does not provide conclusive indications as to its interpretation. The Oxford Dictionary[23] defines the notion of 'admission' as 'the process or fact of entering or being allowed to enter a place or organisation'. The language versions of the directive which I have been able to verify use terms that have a very similar broad meaning.[24]

23 See online https://en.oxforddictionaries.com/.

24 See the following language versions: CZ: vstup; DE: Eintrittsberechtigung; ES: acceso; FR: accès; IT: accesso; NL: toegang, PL: wstęp; PT: acesso; and SV: tillträde.

47. The legislative history shows that the intention of the EU legislature was gradually to shift, with effect from 1 January 2010, the general rule defining the place of supply of services to taxable persons away from the Member State where the supplier is established [25] to the Member State where the customer is established. [26] In parallel, the scope of the specific rule — providing for taxation of educational services supplied to taxable persons in the Member State where the services are physically carried out — was also restricted, as from 1 January 2011, in favour of that newly introduced general rule. [27]

48. The preparatory legislative material leading to the adoption of Directive 2008/8 suggest that the use of the terms 'admission' and 'event' was anything but accidental or random. On the contrary: the introduction of those concepts was subject to protracted discussions and was intentional. [28]

49. Since the EU legislature deliberately chose to maintain, albeit in a limited form, the specific rule in relation to certain educational services, that provision cannot be interpreted in a way that erodes its scope without compromising that objective.

50. Further indications as to how 'admission' should be construed may be drawn from the context. Articles 44 and 53 of Directive 2006/112 together provide for a general and a specific rule for educational services supplied to taxable persons, whilst Articles 45 and 54 play a similar role in the context of educational services supplied to final consumers. The similarities stop there. Whilst Article 53 refers to services in respect of admission to educational *events*, Article 54 applies to 'services … relating to … educational … *activities*' (emphasis added). The scope of the latter provision is therefore broader in two respects. First, it is not limited to 'educational events', but encompasses various kinds of 'educational activities'. Secondly and more importantly, it is not limited to services in respect of 'admission'.

51. The fact that the EU legislature uses different terms in those neighbouring provisions suggests that its intention was to distinguish between three different categories of educational services concerned. Only some educational *activities* (the first and the broadest category of services) constitute educational *events* (the second intermediate category) and only some services in relation to such events can be classified as being essentially 'in respect of *admission*' (the third and the narrowest category; emphasis added). [29]

25 Such was the general rule in force until 31 December 2009. See footnote 17 above.

26 As from 1 January 2010, such was the general rule pursuant to Article 44 of Directive 2006/112, as amended by Article 2 of Directive 2008/8.

27 Until 31 December 2010, that specific rule applied to services in respect of educational activities (until 31 December 2009, pursuant to Article 52 of Directive 2006/112 in its initial version; and between 1 January and 31 December 2010, pursuant to Article 53 of Directive 2006/112 as amended by Article 2 of Directive 2008/8). As from 1 January 2011, the scope of that rule was restricted to services in respect of admission to educational *events*, pursuant to Article 53 of Directive 2006/112 as amended by Article 3 of Directive 2008/8.

28 During the legislative process various options were deliberated: (i) to abolish the specific rule in Article 9(2)(c) of Directive 77/388 providing for the taxation of education services in the Member State where they 'are physically carried out' and to submit those services to the general rule (see Commission documents COM(2003) 822 of 23 December 2003 and COM(2005) 334 of 20 July 2005 as well as Council document 11857/04 of 4 August 2004); (ii) to maintain that specific rule (see Council documents 11162/04 of 8 July 2004 and 16112/05 of 23 December 2005); (iii) to restrict the scope of that specific rule to the 'provision of admission' to educational activities (see Council documents 11162/04 of 8 July 2004 and 15420/04 of 29 November 2004) and, finally, (iv) to provide for a transitional period from 1 January to 31 December 2010 (see now Articles 2 and 3 of Directive 2008/8) during which, despite the modification of the general rule, the scope of the specific rule applicable to educational activities remained untouched, following which that specific rule was restricted to services in respect of 'admission to educational events' (Council document 9913/2/06 of 2 June 2006).

29 That conclusion appears to coincide with the interpretation agreed almost unanimously in the VAT Committee during the meeting of 10 to 12 May 2010 to the effect that 'the concept of "activities" provided for in Article 54 of the VAT Directive (in its wording as of 1 January 2011) also includes *events* as covered by Article 53 of that directive (in its wording as of 1 January 2011)' (emphasis added). See Guidelines of the VAT Committee resulting from the 91st meeting, document number A — taxud.c.1(2010)426874 — 668, point 2. I recall that the VAT Committee is established on the basis of Article 398(2) of Directive 2006/112 and comprises representatives of the Commission and of the Member States. While the guidelines issued by that committee are merely views of an advisory committee and not an official interpretation of EU law, and therefore are not binding, they nevertheless provide a useful aid to interpretation of Directive 2006/112. See, to that effect, Opinion of Advocate General Kokott in *RR Donnelley Global Turnkey Solutions Poland*, C-155/12, EU:C:2013:57, points 46 to 50.

52. The context in which Article 53 is situated therefore militates against the restrictive interpretation of 'admission' put forward by Skatteverket and the Commission. On the one hand, that interpretation would deprive the notion of 'admission to an event', and thus Article 53, of most of its substance. On the other hand, services in respect of 'admission to an educational event' cannot be assimilated with the provision of an 'educational event'. Rather, those two categories of services should be distinguished on the basis of an objective, clear and workable criterion.

53. As I see it, the key to interpreting Article 53 lays in the emphasis that that provision places on individual attendees. That position is confirmed indirectly by Article 33 of Regulation No 282/2011, which refers to supplies to 'a person *attending* an event' (emphasis added). Thus, the essential feature of the services falling within the scope of Article 53 lies in granting an individual or a number of individuals the right of access to the premises where an educational event is held. The price can be said to have been charged in return for granting a given number of individuals rights to access to a given event. In practical terms therefore, as soon as the supplier of an event controls the number of individuals able to gain access and charges a taxable person a fee in respect of their admission, such an event is likely to fall within Article 53 of Directive 2006/112.

54. In contrast, the provision of an event *as such*, that is to say a service that consists of organising or hosting an educational event and marketing it *as a whole* falls outwith Article 53. This might be, for example, when a service consists of selling a ready-made training course or seminar to a taxable person with a view to its further resale to other taxable persons or with a view to offering it collectively to a more or less precisely defined group (for example, to the members of staff and accompanying family members) [30] even if the overall capacity is set out.

55. It seems to me to be irrelevant whether the individual's participation in the event is active or passive. That will depend on the nature of the event in question: attending a lecture will normally not involve any active form of participation. Participation in a seminar will most often require those attending to behave somewhat more actively. The right to participate is secondary to and inseparable from the primary right to be admitted and naturally is also subject to Article 53.

56. Where 'admission' to an event constitutes one of many components of a composite service (and thus cannot be regarded as its essential element), that service taken as a whole should be subject to the general rule in Article 44. That would be the case, for example, when a service consists of organising a business trip for the chief accountant of a company, including not only participation in an educational conference, but also catering, accommodation and visits to a number of tourist attractions.

57. The fact that Article 33 of Regulation No 282/2011 identifies the use of cloakrooms or sanitary facilities by those attending educational events as 'ancillary services' does not call those conclusions into question or speak in favour of a stricter interpretation of 'admission'. Those ancillary services are directly related to admission in the same way that they are related to attendance or participation. They do not constitute for customers a desired benefit in themselves. They merely contribute to the fuller enjoyment of the principal service supplied. Naturally therefore, they should share the tax treatment of the principal service, that is to say the admission to the event. [31] I do not regard the fact that Article 33 excludes intermediary services relating to the sale of admission tickets from the scope of 'ancillary services' as indicating that there is a compelling argument in favour of a particularly narrow interpretation of the term 'admission'.

30 For example, entertainment or cultural away-day events offered by entrepreneurs to staff and their families.

31 Judgment of 21 June 2007, *Ludwig*, C-453/05, EU:C:2007:369, paragraph 18.

58. Furthermore, unlike Article 54 (supplies to non-taxable persons), Article 53 does not cover other accompanying services not related to admission or the 'supply of services of the organisers of [educational] activities'. Where such other services are provided to taxable persons, the place of supply is identified in accordance with the general rule set out in Article 44. This further strengthens the argument that Article 53 is meant to apply specifically to the service of providing the right of admission for participants in exchange for payment, whereas services of a different nature fall outwith the scope of that provision.

59. Finally, each of the services related to the various steps required to organise, host and make an event available to individual participants should be considered on its own merits. In practical terms, the interpretation I have suggested above means that the supply of an educational event for consideration, regardless of the number of persons attending, and where the price depends in essence on the duration (number of hours) of such an event, its components or other technical parameters, rather than on the number of individuals attending that event, will fall outwith Article 53 of Directive 2006/112.

60. It follows that where the organiser of an educational event sells the service of providing such an event as a whole to a third-party,[32] to an employer that intends to offer its employees in-house training or to the owner of a conference centre who intends to market that event himself, that transaction is outwith Article 53 and is to be taxed in accordance with Article 44. By contrast, where the taxable person who acquired such a turnkey event (re)sells the available places to another taxable person for a price that essentially depends on the number of persons to be admitted, the 'admission' to that event is the essence of such a service and, accordingly, Article 53 applies. Similarly, where an employer who has bought the supply of services in respect of an event realises that the conference room in which that event is to take place can host more persons than it has employees, decides to sell the remaining places to one or more taxable persons and (naturally) charges a price per person admitted, that or those transactions will also be subject to Article 53.

Additional criteria

61. Skatteverket, Sweden and the Commission variously argue that the Court should consider additional criteria in relation to the application of Article 53 of Directive 2006/112. I disagree with that approach. For the sake of good order I shall examine their principal suggestions below.

62. First, various technical or practical aspects in relation to registration and payment, in particular whether these elements are dealt with in advance, are immaterial inasmuch as they are not capable of altering the nature of the service in question. Article 32(1) of Regulation No 282/2011 provides in broad terms that those rights should be granted 'in exchange for a ticket or payment, including payment in the form of a subscription, a season ticket or a periodic fee'. The same must be true as regards the form in which the rights of admission are transferred to their beneficiary.

63. Second, I cannot accept the Commission's suggestion that Article 53 applies solely to events where the supplier does *not* know at least some of the participants in advance. The Commission argues that events for which prior registration is required, thereby enabling the supplier to know in advance the fiscal status of all the participants together with the fiscal identification data, fall under Article 44.

32 Several other scenarios including the provision of various types of services by intermediaries are possible. They go beyond the scope of this Opinion and I shall not consider them further. For discussion of those aspects see Guidelines of the VAT Committee resulting from the 97th meeting of 7 September 2012, document number A — taxud.c.1(2012)1453230 — 743. See also Amand, Ch., 'The place of supply of admission to scientific and educational events within the European Union', *International VAT Monitor*, July-August 2015, p. 213.

64. I see nothing in the relevant provisions stipulating that 'admission' requires that the events be open at least partially to the general public or to a group of unidentified, anonymous customers. Nor can I see on what basis making participation in a seminar available to an unknown client transforms the nature of the service into the provision of an 'admission', whilst selling that same service to a client known in advance should be regarded as falling outwith that concept.

65. Such a criterion appears to me both arbitrary and prone to manipulation. It would enable the organiser of a cross-border event to choose the Member State where it will be taxed, merely by changing an utterly insignificant element of the service offered — for example, by deliberately omitting to request some of the participants at the event to submit their VAT identification numbers in advance or by admitting several taxable customers at the last minute by offering them tickets at the door.

66. The fact that, at the hearing, the Commission claimed that the admission to an event on the basis of a *nominative* seasonal ticket falls *within* the scope of Article 53 only adds to the confusion and shows that that institution has difficulty in delineating precisely the boundaries of the criterion that it itself put forward.

67. For the same reasons, I cannot accept that the application of Article 53 should turn on whether obtaining fiscal identification data in advance of an event is (subjectively) 'impossible' for the supplier. I find it implausible to conceive that it will in practice be impossible or excessively difficult to collect a minimum set of necessary data from taxable persons participating in an event prior to handing them their invoice (which they will assuredly want for tax purposes), even if the tickets themselves are issued on the premises, directly prior to the event. [33]

68. I likewise have difficulty with the proposition put forward by Skatteverket to the effect that where admission to an event is offered to the general public — rather than to one, several or a specific predefined group of taxable persons — Article 53 does not apply. To my mind, such a circumstance is not such as to undermine the essential nature of that admission for the supply in question.

69. That criterion appears to me as arbitrary and prone to manipulation as the one advanced by the Commission. The supplier would easily be able to influence the place of supply of cross-border educational events, either by restricting the circle of potential customers to whom it addresses its offer or by broadening it for example, by advertising the event on a publically accessible website or selling the remaining places at the door to chance customers. I add that since the seminars provided by Srf konsulterna are available to both members and non-members of the Swedish professional association of accountants, that criterion would not appear either to help to determine the place of supply of the services at issue.

70. Third, Sweden and the Commission argue that Article 53 should be applied only if taxation at the place of supply of service does not involve what they term a '*disproportionate* administrative burden' on the taxable persons concerned. To that end they rely on the wording of recital 6 of Directive 2008/8 [34] and argue — together with Skatteverket — that in the particular case of the seminars at issue, the administrative burden that would result from applying Article 53 would be disproportionate. [35]

33 That view only confirms the conclusion that I reached in point 62 above that advance registration or payment are immaterial for the application of Article 53.

34 Namely, that 'in certain circumstances, the general rules as regards the place of supply of services … are not applicable and specified exclusions should apply instead. [They] should be largely based on existing criteria and reflect the principle of taxation at the place of consumption, while not imposing disproportionate administrative burdens upon certain traders'.

35 The pleadings indicate that the alleged additional administrative burden would consist of the requirement (i) to register for VAT purposes in the Member State where the event actually takes place; and (ii) to account for VAT there; and (iii) specifically for the customers, to engage in the procedure to obtain reimbursement of the input VAT thus incurred.

71. It is perfectly true that avoiding imposing an additional administrative burden was amongst the objectives sought by the Commission in its proposal for amending Directive 2006/112.[36] Recital 6 of Directive 2008/8 duly reflects that objective. I am however clear that a taxable person cannot rely upon an administrative burden potentially generated by the fact that a service is taxed in one Member State rather than in another in order to neutralise the effect of an otherwise applicable provision of EU law. Even if, *quod non*, recital 6 were to be regarded as a principle of interpretation, the clear wording of Article 53 could not be overridden, since a recital cannot take precedence over the legislative text.[37]

72. To accept such a criterion would make the application of Article 53 dependant on the particular constellation of specific circumstances of the case. It is inconceivable that an EU-wide taxation system could be run on the basis of such volatile and random considerations. Moreover, it is entirely unclear to me how one would identify the situations in which the administrative burden reaches the threshold of being disproportionate. What is evident is that such a criterion is unworkable. It would require the interested taxable persons to verify in each individual case whether that undefined threshold was reached. That would frequently put them on a collision course with the competent authorities.

73. More generally, it seems to me that the administrative burden that in some cases may result from generally applicable provisions of national laws intended to transpose EU directives can never be regarded as disproportionate unless and until those latter provisions are struck down by this Court on the grounds that they are not proportionate. However, that issue is not part of this preliminary reference and I shall not discuss it further. I merely add that, since Directives 2008/8 and 2008/9/EC[38] lay down a number of rules and procedures specifically intended to reduce any potential administrative burden on taxable persons in relation to supplies in the Member State other than that in which they are established,[39] it is difficult to see how Article 53 of Directive 2006/112 can be regarded as resulting in a disproportionate burden for the taxable persons concerned.

74. I add that it is clear from the case-law that the preamble to an EU act has no binding legal force and cannot be relied on as a ground for derogating from the actual provisions of the act in question or for interpreting them in a manner clearly contrary to their wording.[40]

75. To sum up, to apply any of the additional criteria that were canvassed would result in a particularly narrow interpretation of Article 53 of Directive 2006/112. I am of the view that there is nothing in the wording or purpose of that provision to support such a restrictive interpretation. Furthermore, under those criteria the interested taxable persons would be required to demonstrate, on each occasion, that their supplies meet those volatile criteria and the competent authorities would then have to verify it. That presents a great potential for litigation and is likely to lead to an increase in the overall administrative burden, quite the contrary to the objective set out in recital 6.

76. Those criteria may also lead to a paradoxical situation, where similar educational events taking place in parallel in the same place will be taxed in different Member States, depending on the place where the customers are established. Seen from the angle of the functioning of the internal market and of the rules of competition, that does not strike me as a particularly desirable situation.[41]

36 See point 30 above and the references to the Commission proposals cited therein.

37 See, by analogy, my Opinion in *Klinikum Dortmund*, C-366/12, EU:C:2013:618, point 55.

38 Council Directive of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23).

39 Thus, recital 8 of Directive 2008/8 states that 'to simplify the obligations on businesses engaging in activities in Member States where they are not established, a scheme should be set up enabling them to have a single point of electronic contact for VAT identification and declaration'. Recital 2 of Directive 2008/9 states that the procedure for refund of VAT 'should be simplified and modernised by allowing for the use of modern technologies' and recital 3 explains that that procedure 'should enhance the position of businesses'. Those objectives are reflected in the substantive provisions of those directives. I shall not develop this argument further, since it goes beyond the scope of this Opinion.

40 Judgment of 24 November 2005, *Deutsches Milch-Kontor*, C-136/04, EU:C:2005:716, paragraph 32 and the case-law cited.

41 The Court held consistently that the principle of fiscal neutrality precludes treating similar goods, which are thus in competition with each other, differently for VAT purposes. It also includes the principles of VAT uniformity and of elimination of distortion in competition (see, to that effect, judgment of 3 May 2001, *Commission* v *France*, C-481/98, EU:C:2001:237, paragraph 22).

77. Finally, making the application of Article 53 subject to any of the criteria discussed above would make the determination of the place of supply dependent on an uncertain and, to some extent, subjective analysis.[42] That would run counter to the principle of legal certainty which requires, particularly in matters which, like VAT, have financial repercussions, that EU law provisions should be clear, precise and foreseeable so as to enable interested parties to assess their effects in good time and to take steps accordingly.[43] Since therefore those criteria are liable to undermine the uniformity of the application of Article 53 and thus the effectiveness of Directive 2006/112, none of them can be retained.[44]

78. Applying Article 53 to the services at issue does not appear to raise any practical difficulty: the place where the activities in question are carried out can be readily identified.[45] Since the services concerned are subject to VAT in the Member State where they actually take place, the result is not an irrational solution from the point of view of taxation.[46] Likewise, applying Article 53 does not appear to be excessively complex or to jeopardise the reliable and correct collecting of VAT.[47]

Whether the seminars at issue fall within Article 53 of Directive 2006/112

79. The Court's role in preliminary reference proceedings is to provide the referring court with all the guidance as to the interpretation of EU law which may be of assistance.[48] I shall therefore conclude by outlining certain elements that the referring court may need to consider when determining whether Article 53 of Directive 2006/112 applies to the facts in the main proceedings.

80. As I have already noted,[49] it is common ground that the seminars at issue constitute educational services supplied to taxable persons.

81. There is nothing in the file before the Court to suggest that those seminars do not fall within the concept of 'event' construed in the light of my conclusion set out in point 44 above. Those services are five-day seminars on accountancy with a day's break in the middle; they take place in a specified location and their programme is defined in advance. In principle, such services appear to fit naturally within the concept of 'educational events' within the meaning of Article 53. At the hearing, Sweden and the Commission argued that that was indeed the case. I see no reason to disagree.

82. A point that still needs to be examined is whether the service Srf konsulterna provides in exchange for payment is the right to be admitted, rather than other types of services in relation to the seminars at issue in the main proceedings. In short, that turns on whether the essential element is that Srf konsulterna sells to its customers individual rights to be admitted to the seminars it organises and charges them a price 'per person'.

83. Conversely, it is immaterial whether Srf konsulterna targets particular customers or the general public with its services, including through making information about its seminars available to the general public via the internet. It is also immaterial whether at the time of the event, Srf konsulterna has at its disposal the fiscal identification data of each and every customer who has bought the right

42 See, by analogy, Opinion of Advocate General Léger in *MyTravel*, C-291/03, EU:C:2005:283, point 52.

43 Judgment of 12 February 2004, *Slob*, C-236/02, EU:C:2004:94, paragraph 37.

44 It is settled case-law that where, as in the present case, a provision of EU law is open to several interpretations, preference must be given to the interpretation which ensures that the provision retains its effectiveness by interpreting it to that end in the light of the purposes of the legislation of which it forms part. See judgment of 6 September 2018, *Czech Republic* v *Commission*, C-4/17 P, EU:C:2018:678, paragraph 45 and the case-law cited.

45 See, by analogy, judgment of 12 May 2005, *RAL (Channel Islands) and Others*, C-452/03, EU:C:2005:289, paragraph 33.

46 Concerning the criterion of 'rationality from the point of view of taxation,' see judgment of 12 May 2005, *RAL (Channel Islands) and Others*, C-452/03, EU:C:2005:289, paragraph 33.

47 Concerning that criterion, see judgment of 27 October 2011, *Inter-Mark Group*, C-530/09, EU:C:2011:697, paragraph 26.

48 Judgment of 10 November 2016, *Baštová*, C-432/15, EU:C:2016:855, paragraph 73.

49 See point 23 above.

to be admitted. Finally, it is immaterial whether — as a result of applying Article 53, rather than Article 44 — Srf konsulterna or its customers would be required to register for VAT purposes in another Member State in relation to those seminars and whether they would have to pay VAT and subsequently make a request for reimbursement of the input VAT incurred in that other Member State.

84. On the basis of the elements available to this Court, it appears that the very nature of Srf konsulterna's services is to supply to its taxable customers the right for individuals to be admitted to the premises where a specific seminar actually takes place thereby enabling them to take part in those seminars. Ultimately, however, whether the supply of seminars at issue falls within the concept of 'admission' within the meaning of Article 53 of Directive 2006/112 is for the referring court alone to establish, having regard, in its overall assessment, to all the relevant circumstances.

Conclusion

85. In light of the foregoing, I suggest that the Court give the following answer to the question referred by the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden):

The expression 'supplies in respect of admission to … educational … events' in Article 53 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax should be interpreted as meaning that it covers a service supplied solely to taxable persons whose essential element consists of selling rights for individuals to be admitted to a professional educational seminar extending over one or several days, where that seminar takes place in a specified location and its subject matter is defined in advance, which it is for the national court to determine. It is immaterial whether: (i) all customers make information, such as their fiscal identification data, available to the supplier; (ii) the service in question requires advance registration or payment; (iii) that service is offered only to a specific group or to the general public; and (iv) the fact that the service is taxed in the Member State where the event in question takes place leads to an additional administrative burden for the supplier or its customers.