

2. If the first question is answered in the affirmative:

Does this apply even where the employment relationship is between two private persons?

⁽¹⁾ OJ 2003 L 299, p. 9.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 2 January 2017 — Instituto Nacional de la Seguridad Social v Tesorería General de la Seguridad Social, Jesús Crespo Rey

(Case C-2/17)

(2017/C 104/47)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellant: Instituto Nacional de la Seguridad Social

Other parties: Tesorería General de la Seguridad Social, Jesús Crespo Rey

Questions referred

1. Must the expression ‘the contribution basis in Spain which is closest in time to the reference periods’, referred to in Annex XI(G)(2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, be interpreted as excluding those contribution bases arising from the application of Spanish domestic legislation ⁽¹⁾ under which a migrant worker who has returned to Spain and whose actual final Spanish contributions are higher than the minimum bases may conclude an agreement maintaining the contributions in accordance only with the minimum bases, whereas, if he were a non-migrant worker, he could have concluded such an agreement on higher bases?
2. In the event of an affirmative answer to the previous question, and in accordance with Annex XI(G)(2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004, do taking the last actual contributions made in Spain, duly updated, and regarding the contribution period under the agreement maintaining contributions as a neutral period or interval constitute remedies appropriate for indemnifying the damage done to the migrant worker?

⁽¹⁾ OJ 2004, L 166, p. 1.

Request for a preliminary ruling from the Curtea de Apel Cluj (Romania) lodged on 10 January 2017 — Maria Dicu v Ministerul Justiției, Consiliul Superior al Magistraturii, Curtea de Apel Suceava, Tribunalul Botoșani

(Case C-12/17)

(2017/C 104/48)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Applicant: Maria Dicu

Defendants: Ministerul Justiției, Consiliul Superior al Magistraturi, Curtea de Apel Suceava, Tribunalul Botoșani

Question referred

Must Article 7 of Directive 2003/88/EC⁽¹⁾ be interpreted as precluding a provision of national law which, in determining the duration of a worker's annual leave, does not consider the period of parental leave for a child under two a period of service completed?

⁽¹⁾ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 13 January 2017 — TGE Gas Engineering GmbH — Sucursal em Portugal v Autoridade Tributária e Aduaneira

(Case C-16/17)

(2017/C 104/49)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: TGE Gas Engineering GmbH — Sucursal em Portugal

Defendant: Autoridade Tributária e Aduaneira

Questions referred

Must Articles 44, 45, 132(1)(f), 167, 168, 169, 178, 179 and 192a, 193, 194 and 196 of the VAT Directive (Directive 2006/112),⁽¹⁾ Articles 10 and 11 of Implementing Regulation (EU) No 282/2011⁽²⁾ and the principle of neutrality be interpreted as meaning that they preclude the Portuguese tax authorities from refusing the right to deduction of VAT by a branch of a German company, in circumstances where:

- the German company obtained a tax identification number in Portugal to carry out an isolated act, namely 'acquisition of shares', corresponding to a non-resident entity without a permanent establishment;
- subsequently, the branch of that German company was registered in Portugal and was assigned its own tax number, as a permanent establishment of that company;
- later, the German company, using the first identification number, entered into a contract with another company to establish an economic interest group (ACE) to carry out a works contract in Portugal;
- subsequently, the branch, using its own tax number, entered into a subcontract with the ACE, setting out the reciprocal services between the branch and the ACE and agreeing that the latter would invoice the subcontractors, in the agreed proportions, for the costs which it incurred;
- the ACE indicated the branch's tax identification number in the debit notes it issued to invoice costs to that branch, and charged VAT;
- the branch deducted the VAT charged in the debit notes;