

Judgment of the Court (Eighth Chamber) of 16 September 2020 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Mitteldeutsche Hartstein-Industrie AG v Finanzamt Y

(Case C-528/19) ⁽¹⁾

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Sixth Directive 77/388/EEC — Article 17(2)(a) — Deduction of input tax — Origin and scope of the right to deduct — Extension of a road belonging to a municipality — Entry in the accounts of the costs incurred by the works as part of the taxable person's general costs — Determination of the existence of a direct and immediate link with the economic activity of the taxable person — Supply made free of charge — Supply to be treated as a supply made for consideration — Article 5(6))

(2020/C 390/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Mitteldeutsche Hartstein-Industrie AG

Defendant: Finanzamt Y

Operative part of the judgment

1. Article 17(2)(a) 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, must be interpreted as meaning that a taxable person is entitled to deduct input value added tax paid for the works for the extension of a municipal road carried out for the benefit of a municipality, where that road is used both by that taxable person in connection with its economic activity and by the public, in so far as those extension works did not exceed what was necessary to allow that taxable person to carry out its economic activity and the costs of those works are included in the price of the output transactions carried out by that taxable person.
2. Sixth Directive 77/388, in particular Article 2(1) thereof, must be interpreted as meaning that the authorisation to operate a quarry granted unilaterally by an authority of a Member State does not constitute consideration received by a taxable person which carried out, without monetary consideration, works for the extension of a road belonging to a municipality, with the result that those extension works do not constitute a transaction carried out for consideration within the meaning of that directive.
3. Article 5(6) of Sixth Directive 77/388 must be interpreted as meaning that works carried out, for the benefit of a municipality, for the extension of a municipal road open to the public but used, in connection with its economic activity, by the taxable person which carried out those works free of charge and by the public, do not constitute a transaction which must be treated as a supply of goods made for consideration within the meaning of that provision.

⁽¹⁾ OJ C 328, 30.9.2019.