Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

2 July 2020 *

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Supply of services – Article 135(1)(l) – Exemption from VAT – Letting of immovable property – Concept of 'immovable property' – Exclusion – Article 47 – Place of taxable transactions – Supply of services connected with immovable property – Implementing Regulation (EU) No 282/2011 – Articles 13b and 31a – IT equipment cabinets – Colocation centre services)

In Case C-215/19,

Request for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), made by decision of 5 March 2019, received at the Court on 8 March 2019, in the proceedings brought by

Veronsaajien oikeudenvalvontayksikkö,

Intervening parties:

A Oy,

THE COURT (Tenth Chamber),

Composed of I. Jarukaitis, President of the Chamber, E. Regan (Rapporteur), President of the Fifth Chamber and C. Lycourgos, Judge,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the European Commission by J. Jokubauskaitė and I. Koskinen, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Finnish.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 47 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2008/8/EC of 12 February 2008 (OJ 2008 L 44, p. 11) ('the VAT Directive'), and of Article 13b and Article 31a of 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), as amended by Council Implementing Regulation (EU) No 1042/2013 (OJ 2013 L 284, p. 1) ('the Implementing Regulation').

2 The request has been made in proceedings brought by the Veronsaajien oikeudenvalvontayksikkö (Tax Recipients Legal Services Unit, Finland), concerning the determination of the place for collecting value added tax (VAT) relating to colocation centre services provided by A Oy.

Legal context

European Union law

The VAT Directive

3 Chapter 3 of Title V of the VAT Directive concerning the place of taxable transactions is entitled 'Place of supply of services'. Section 2 of that Chapter, entitled 'General Rules', contains Articles 44 and 45 of that directive.

4 Article 44 of the VAT Directive is worded as follows:

'The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides.'

5 Section 3 of Chapter 3 of the VAT Directive is entitled 'Particular provisions' and contains Articles 46 to 59a of that directive.

6 Article 47 of that directive is entitled 'Supply of services connected with immovable property' and provides:

'The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located.'

7 In Chapter 3, entitled 'Exemptions for other activities', of Title IX of the VAT Directive, which is entitled 'Exemptions', Article 135(1) provides:

'Member States shall exempt the following transactions:

…

(l) the leasing or letting of immovable property.

…'

The Implementing Regulation

8 In Section 1, entitled 'Concepts', of Chapter V of the Implementing Regulation, which is entitled 'Place of taxable transactions', Article 13b thereof provides:

'For the application of [the VAT Directive], the following shall be regarded as "immovable property":

…

(c) any item that has been installed and makes up an integral part of a building or construction without which the building or construction is incomplete, such as doors, windows, roofs, staircases and lifts;

(d) any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction.'

9 Section 4 of that Chapter, entitled 'Place of supply of services (Articles 43 to 59 of the VAT Directive)', includes Subsection 6a, entitled 'Supply of services connected with immovable property', which contains Article 31a of that regulation, which is worded as follows:

'1. Services connected with immovable property, as referred to in Article 47 of [the VAT Directive], shall include only those services that have a sufficiently direct connection with that property. Services shall be regarded as having a sufficiently direct connection with immovable property in the following cases:

(a) where they are derived from an immovable property and that property makes up a constituent element of the service and is central to, and essential for, the services supplied;

(b) where they are provided to, or directed towards, an immovable property, having as their object the legal or physical alteration of that property.

2. Paragraph 1 shall cover, in particular, the following:

…

(h) the leasing or letting of immovable property other than that covered by point (c) of paragraph 3, including the storage of goods for which a specific part of the property is assigned for the exclusive use of the customer;

…

3. Paragraph 1 shall not cover the following:

…

(b) the storage of goods in an immovable property if no specific part of the immovable property is assigned for the exclusive use of the customer;

…’

Finnish law

10 The first subparagraph of Paragraph 1 of Arvonlisäverolaki (1501/1993) (Law (1501/1993) on value added tax) of 30 December 1993, in the version applicable at the time of the facts of the main proceedings (‘the AVL’) provides:

‘Value added tax shall be levied for the benefit of the State in accordance with the rules laid down in this Law:

(1) on the sale of goods or services that takes place in Finland in the course of business;

…’

11 Under Paragraph 27 of the AVL:

‘The sale of immovable property and the leasing, letting, easement, or any other transfer of a right which may be connected with immovable property shall be exempt from tax.

Any sale of electricity, gas, heating, water or other comparable commodities, in the context of the transfer of a right of use of a non-taxable building, is exempt from tax.’

12 Paragraph 28 of the AVL provides:

‘“Immovable property” means “any immovable property as defined in Article 13b of [the Implementing Regulation].”’

13 Under Paragraph 65 of the AVL:

‘Save as hereinafter provided, the place of supply of a service supplied to a trader acting as such is Finland where the service is supplied to the customer’s fixed establishment located in that country. The place of the supply of such a service, where it is not supplied to a fixed establishment, is Finland where the customer has established his business in that country.’

14 Paragraph 67 of the AVL states:

‘The place of supply of services connected with immovable property shall be Finland if the property in question is situated in that country.

The term "supply of services connected with immovable property" shall include, in particular the services of experts and estate agents, hotel accommodation, the granting of rights to use immovable property and construction services.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 A Oy, a company incorporated under Finnish law, is an operator of wireless communications networks whose business also includes the development of telecommunications networks and network infrastructure.

16 The company offers, inter alia, colocation centre services for operators established in Finland and in other Member States operating in the field of information technology who use their own servers to provide electronic connections to their customers. The servers are held in premises which are equipped with the necessary electronic connections in which humidity and temperature are regulated in a precise way to enable those servers to be used for their intended purpose in a refrigerated environment.

17 The colocation centre services offered by A Oy include the provision of an IT equipment cabinet with a lockable door, electricity and services intended to ensure that the servers are used under optimal conditions, such as the monitoring of temperature and humidity, refrigeration, the monitoring of disruptions in the power supply, smoke alarms to detect possible fires inside the IT equipment cabinets and electronic access control. Furthermore, the company takes care of the management of general cleaning and the replacement of lighting.

18 The IT equipment cabinets are bolted to the floor in property rented by A Oy. The users then place their equipment there, which is bolted to the IT equipment cabinets and can be removed within a few minutes.

19 Customers do not have their own key to the IT equipment cabinet in which they have installed their server but can obtain it following verification of their identity with a security service which is available at any time. A Oy is not entitled to access its customer's IT equipment cabinet.

20 A Oy made a request to the tax authorities for a preliminary decision regarding the VAT regime applicable to those services.

21 By decision of 27 February 2017, those authorities considered, as regards the period between 27 February 2017 and 31 December 2018, that the colocation centre services provided by A Oy were not covered by the general rule on the place of supply of services, provided for in Paragraph 65 of the AVL but were to be considered as the supply of services connected with immovable property, within the meaning of Paragraph 67 of the AVL, the place of which is defined as being the place where that property is situated. According to the tax authorities, the hiring of the equipment room which was required for the colocation centre services constituted the principal supply of services in the basket of services provided by A Oy, since it is central and essential to those services. This service must therefore be regarded as the assignment of a right to use immovable property, within the meaning of Paragraph 27 of the AVL.

22 By judgment of 27 October 2017, the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland), before which A Oy brought an action, annulled that decision. That court held that the colocation centre services provided by A Oy could not be regarded as the supply of services

connected with immovable property, within the meaning of Paragraph 67 of the AVL, and were therefore covered by the general rule laid down in Paragraph 65 of that law. It found, in that regard, that even if the IT equipment cabinets for holding the servers were fixed to the ground, they can be removed without destroying or altering the building or construction, within the meaning of Article 13b(d) of the Implementing Regulation. Those IT equipment cabinets did not therefore constitute immovable property within the meaning of that provision, since the customer does not gain possession of any part of the computing centre, regarded as a building, but merely has the opportunity to use the cabinets placed in that computing centre under optimal conditions. A Oy therefore provides its customers with a basket of services relating to the hosting of their servers, the principal supply of which is to offer them the best possible environment for the operation of their servers.

23 The Tax Recipients Legal Services Unit appealed to the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) against that decision.

24 In the order for reference, that court is uncertain as to whether the IT equipment cabinets provided by A Oy in the computing centres which they offer must be regarded as immovable property within the meaning of Article 13b of the Implementing Regulation. If that is not the case, the question arises as to whether those services must be regarded as connected with immovable property, within the meaning of Article 47 of the VAT Directive, the place of supply of which is the place where that immovable property is situated. In its assessment of the latter question, the referring court considers that account should also be taken of Article 31a of the Implementing Regulation which defines the scope of the concept of 'services connected with immovable property' for the purposes of Article 47.

25 In those circumstances, the Korkein hallinto-oikeus (Supreme Administrative Court) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are Articles 13b and 31a of [the Implementing Regulation] to be interpreted as meaning that [colocation centre services] of the type at issue in the main proceedings, [by] which a trader provides its customers with [IT] equipment cabinets in a computing centre for holding customers' servers together with ancillary services, are to be regarded as the leasing or letting of immovable property?

(2) If the first question is answered in the negative, are Article 47 of [the VAT Directive] and Article 31a of [the Implementing Regulation] nevertheless to be interpreted as meaning that [colocation centre services] of the type at issue in the main proceedings [are] to be regarded as a service connected with immovable property, the place of supply of which is the location of the property?'

Consideration of the questions referred

Preliminary observations

26 It should be noted that, by its two questions, the referring court asks the Court to interpret the VAT Directive in the context of a dispute concerning the tax treatment of a supply of services which that court itself classified as 'colocation centre services'.

27 As is apparent from the order for reference, the services include several items which, as has been noted in paragraphs 16 to 18 of the present judgment, consist, first, of the provision by the provider of IT equipment cabinets with a lockable door, in which the customers of the provider can hold their servers and, secondly, of the supply to those servers of electricity and various services intended to ensure the use of those servers under optimal conditions, in particular, as regards humidity and temperature.

28 According to the Court's case-law, where a transaction comprises a bundle of elements and acts, regard must be had to all the circumstances in which the transaction in question takes place in order to determine whether that operation gives rise, for the purposes of VAT, to two or more distinct supplies or to one single supply (judgment of 4 September 2019, *KPC Herning*, C-71/18, EU:C:2019:660, paragraphs 35 and the case-law cited).

29 In particular, a supply must be regarded as a single supply where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a supply must be regarded as ancillary to a principal supply if it does not constitute, for customers, an end in itself but a means of better enjoying the principal service supplied (judgment of 4 September 2019, *KPC Herning*, C-71/18, EU:C:2019:660, paragraph 38 and the case-law cited).

30 In the present case, it is clear from the order for reference, in particular from the actual wording of the questions referred, that the referring court considers that the various elements of the provision of colocation centre services at issue in the main proceedings form a single supply in which the provision of IT equipment cabinets constitutes the principal supply, the supply of electricity and services intended to ensure the use of those servers under optimal conditions being regarded as ancillary to that principal supply.

31 As is clear from the settled case-law of the Court, questions on the interpretation of EU law are referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to verify (see, in that regard, judgment of 26 March 2020, *Kreissparkasse Saarlouis*, C-66/19, EU:C:2020:242, paragraph 30 and the case-law cited).

32 It is therefore on the basis of the premiss thus established by the referring court, that the supply of colocation centre services at issue in the main proceedings constitutes a single supply in which the provision of IT equipment cabinets is the main supply, that the questions referred by that Court must be answered.

The first question

33 In the context of the procedure established by Article 267 TFEU providing for cooperation between national courts and the Court, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court by those courts (judgment of 12 March 2020, *Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle*, C-769/18, EU:C:2020:203, paragraph 39).

34 Therefore, in the present case, even if, formally, the referring court has limited its first question to the interpretation of Articles 13b and 31a of the Implementing Regulation, which define, respectively, the concepts of 'immovable property' and 'services connected with immovable property' for the purpose of determining the place of supply of services subject to VAT, it is clear from the order for reference that this question is intended, in reality, to determine whether Article 135(1)(l) of the VAT Directive which provides for the exemption of the letting of immovable property, applies to the colocation centre services provided by the supplier at issue in the main proceedings. Furthermore, this provision is cited in the grounds of that decision as a rule of EU law applicable to the dispute in the main proceedings and the letting of immovable property is referred to in Article 31a(2)(h) of the Implementing Regulation, which is expressly mentioned in that question.

35 In those circumstances, it must be considered that, by its first question, the referring court, asks, in essence, whether Article 135(1)(l) of the VAT Directive must be interpreted as meaning that colocation centre services in which the supplier of those services provides IT equipment cabinets to its customers for holding their servers there and provides them with ancillary goods and services, such as electricity and various services intended to ensure the use of those servers under optimal conditions, constitute leasing or letting of immovable property services falling within the scope of the exemption from VAT provided for in that provision.

36 In that regard, it should be recalled that, under Article 135(1)(l) of the VAT Directive, leasing or letting of immovable property is exempt from VAT.

37 Exemptions such as those provided for in Article 135(1) of the VAT Directive are autonomous concepts of EU law and must therefore be given a uniform definition at EU level (see, by analogy, judgment of 16 October 2019, *Winterhoff and Eisenbeis*, C-4/18 and C-5/18, EU:C:2019:860, paragraph 43 and the case-law cited).

38 Moreover, according to the Court's settled case-law, the terms used to specify the exemptions envisaged by this provision, including the concept of 'letting of immovable property', are to be interpreted strictly since an exemption constitutes an exception to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, to that effect, judgment of 19 December 2018, *Mailat*, C-17/18, EU:C:2018:1038, paragraph 37 and the case-law cited).

39 Nevertheless, the interpretation of those terms must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Accordingly, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in that provision should be construed in such a way as to deprive them of their intended effects (see, by analogy, judgment of 16 October 2019, *Winterhoff and Eisenbeis*, C-4/18 and C-5/18, EU:C:2019:860, paragraph 45 and the case-law cited).

40 The concept of 'letting of immovable property' in Article 135(1)(l) of the VAT Directive, has been defined by the Court as the right conferred by the landlord on the tenant, for consideration and for an agreed period, to occupy that property as if he or she were the owner and to exclude any other person from enjoyment of such a right (see, to that effect judgment of 28 February 2019, *Sequeira Mesquita*, C-278/18, EU:C:2019:160, paragraph 18 and the case-law cited).

41 The Court has also clarified that the exemption provided for in that provision is due to the fact that the letting of immovable property, whilst being an economic activity, is normally a relatively passive activity, not generating any significant added value. Such an activity must therefore be distinguished from other activities which are either industrial and commercial in nature, or have an object which is better characterised as the provision of a service rather than the mere provision of goods, such as the right to use a golf course, the right to use a bridge in consideration of payment of a toll fee or the right to install cigarette machines in commercial premises (see, to that effect, judgment of 28 February 2019, *Sequeira Mesquita*, C-278/18, EU:C:2019:160, paragraph 19 and the case-law cited).

42 It follows that the passive nature of the letting of immovable property, which justifies the exemption from VAT of such a transaction under Article 135(1)(l) of the VAT Directive, is due to the nature of the transaction itself and not to the way in which the tenant uses the property concerned (judgment of 28 February 2019, *Sequeira Mesquita*, C-278/18, EU:C:2019:160, paragraph 20).

43 Thus, the Court has held that an activity is excluded from that exemption where it entails not only the passive activity of making immovable property available but also a certain number of commercial activities, such as supervision, management and continuing maintenance by the owner, as well as the provision of other facilities, so that, in the absence of quite exceptional circumstances, letting out that property cannot therefore constitute the main service supplied (judgment of 28 February 2019, *Sequeira Mesquita*, C-278/18, EU:C:2019:160, paragraph 21 and the case-law cited).

44 It is in the light of those criteria set out in the case-law of the Court that it must be decided whether colocation centre services such as those at issue in the main proceedings fall within the exemption from VAT provided for in Article 135(1)(l) of the VAT Directive.

45 In the present case, it is clear from the order for reference that the supplier of the computing centre at issue in the main proceedings makes IT equipment cabinets available to its customers in which those customers can install their servers or have them installed by the supplier and that the supplier also provides them, on an ancillary basis, with electricity as well as various services intended to ensure the use or indeed the maintenance of these servers under optimal conditions. It is also clear that customers can only access the IT equipment cabinet assigned to them after obtaining the corresponding keys from a third party on presentation of an identity document for inspection.

46 In those circumstances, and subject to verification by the referring court, the service provider at issue in the main proceedings does not appear to be merely making an area or space available to its customers passively, guaranteeing them the right to occupy it as if they were the owners of it and thus excluding the possibility of any other person enjoying such a right. In particular, there is nothing to indicate that that provider's customers have the right to control or restrict access to the part of the building in which the IT equipment cabinets have been installed.

47 As regards the question whether the IT equipment cabinets could themselves be considered as immovable property covered by a lease, it should be noted that Article 13b of the Implementing Regulation, the purpose of which is to clarify the concept of 'immovable property' for the purposes of the application of the VAT Directive, provides, in particular, in points (c) and (d), that that concept includes, respectively, 'any item that has been installed and makes up an integral part of a building or construction without which the building or construction is

incomplete, such as doors, windows, roofs, staircases and lifts' and 'any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction'.

48 In the present case, it appears that, first, the IT equipment cabinets do not form an integral part of the building in which they are installed, since the building would not be considered, in their absence, as being structurally incomplete, and, secondly, these IT equipment cabinets, being bolted to the ground and therefore capable of being removed without destruction or modification of the building, are not 'permanently' installed either. It follows that such IT equipment cabinets do not appear to be capable of being classified as immovable property covered by a lease and exempted from VAT under Article 135(1)(l) of the VAT Directive, which is a matter for that court to ascertain.

49 Consequently, the answer to the first question is that Article 135(1)(l) of the VAT Directive must be interpreted as meaning that colocation centre services in which the supplier of those services provides its customers with IT equipment cabinets for holding their servers and provides them with ancillary goods and services such as electricity and various services intended to ensure the use of those servers under optimal conditions do not constitute the leasing or letting of immovable property falling within the exemption from VAT provided for by that provision, since – which is for the referring court to ascertain – first, that supplier does not provide an area or space to its customers passively, guaranteeing them the right to occupy it as if they were the owners and, secondly, the IT equipment cabinets do not form an integral part of the building in which they are installed, nor are they installed there permanently.

The second question

50 By its second question, the referring court asks, in essence, whether Article 47 of the VAT Directive and Article 31a of the Implementing Regulation must be interpreted as meaning that colocation centre services by which the supplier of such services provides its customers with IT equipment cabinets for holding their servers and provides them with ancillary goods and services, such as electricity and various services intended to ensure the use of their servers under optimal conditions, constitute the leasing or letting of immovable property, within the meaning of those provisions.

51 In that regard, it must be noted that Articles 44 and 45 of the VAT Directive contain a general rule for determining the place where services are deemed to be supplied for tax purposes, while Articles 46 to 59a of that directive provide a number of specific instances of such places (judgment of 13 March 2019, *Srf konsulterna*, C-647/17, EU:C:2019:195, paragraph 20).

52 The object of all these provisions is to avoid, first, conflicts of jurisdiction which may result in double taxation and, secondly, non-taxation (judgments of 30 April 2015, *SMK*, C-97/14, EU:C:2015:290, paragraph 32 and the case-law cited).

53 Thus, by fixing the point of reference for tax purposes of a supply of services and by delimiting the competences of the Member States, those provisions aim to create a rational delimitation of the respective areas covered by national rules on VAT by determining in a uniform manner the point of reference for tax purposes of supplies of services (see, in that regard, judgment of 30 April 2015, *SMK*, C-97/14, EU:C:2015:290, paragraph 33 and the case-law cited).

54 It follows from the Court's settled case-law that Articles 44 and 45 of the VAT Directive do not take precedence over Articles 46 to 59a thereof. In every situation, the question which arises is whether that situation is covered by one of the cases mentioned in Articles 46 to 59a of that directive. If not, it falls within the scope of Articles 44 and 45 of that directive (judgment of 13 March 2019, *Srf konsulterna*, C-647/17, EU:C:2019:195, paragraph 21 and the case-law cited).

55 It follows that Article 47 of the VAT Directive must not be regarded as an exception to a general rule which must be narrowly construed (see, by analogy, judgments of 8 December 2016, *A and B*, C-453/15, EU:C:2016:933, paragraph 19; of 13 March 2019, *Srf konsulterna*, C-647/17, EU:C:2019:195, paragraph 22; and of 8 May 2019, *Geelen*, C-568/17, EU:C:2019:388, paragraph 25).

56 In the present case, it must be determined whether a supply of colocation centre services such as that at issue in the main proceedings must be considered as connected with immovable property within the meaning of that provision, in which case the place of this supply shall be the place where that immovable property is situated.

57 In that regard, it should be noted at the outset that, although colocation centre services do not feature among the services listed in Article 47 of the VAT Directive, that list is not, as is clear from the term 'including' which precedes it, exhaustive.

58 However, as the European Commission rightly pointed out in its written observations, the services expressly mentioned in that provision clearly show that only services which have a sufficiently direct link with immovable property are capable of falling within the scope of that provision.

59 In that regard, the Court has ruled that, for a supply of services to be considered as connected with immovable property, within the meaning of the same provision, that supply must be connected to expressly specific immovable property and should relate to the immovable property itself. That is the case, inter alia, where expressly specific immovable property must be considered to be a constituent element of a supply of services, in that it constitutes a central and essential element thereof (see, in that regard, judgment of 27 June 2013, *RR Donnelley Global Turnkey Solutions Poland*, C-155/12, EU:C:2013:434, paragraphs 34 and 35).

60 That case-law was, in essence, codified in Article 31a(1)(a) and (b) of the Implementing Regulation which states that services connected with immovable property as referred to in Article 47 of the VAT Directive, only include services which have a sufficiently direct link with the immovable property, which is the case, first, where those services are derived from immovable property, that the said immovable property is a constituent element of the service and is central and essential for the services provided, and secondly, where the said services are provided or intended for the immovable property and aim to change the legal status or the physical characteristics of the said property. As it appears expressly from the combined provisions of Article 31a(2)(h) and Article 31a(3)(b) of the Implementing Regulation, the letting of a building for the storage of goods is not to be regarded as constituting a service connected with immovable property within the meaning of in Article 47 of that directive, if no specific part of the immovable property is assigned for the exclusive use of the customer.

61 In that regard, it is clear from the order for reference that, in the present case, as has already been noted, in essence, at paragraphs 45, 46 and 48 of this judgment, the customers using the colocation centre services at issue in the main proceedings do not have a right of exclusive use of the part of the building in which the IT equipment cabinets have been installed. First, they can only access

the IT equipment cabinets assigned to them after obtaining the corresponding keys from a third party on presentation of an identity document for inspection. Secondly, those customers do not appear to have the right to control or restrict the use of the relevant part of the building. Thirdly, that IT equipment cabinet itself cannot be classified as immovable property.

62 It does not therefore appear that the conditions under which the servers are held meet those required by Article 47 of the VAT Directive and Article 31a of the Implementing Regulation so that the colocation centre services at issue in the main proceedings can be regarded as connected with immovable property, which is for the referring court to verify.

63 Consequently, the answer to the second question is that Article 47 of the VAT Directive and Article 31a of the Implementing Regulation must be interpreted as meaning that colocation centre services by which the supplier of those services provides its customers with IT equipment cabinets for holding their servers and provides them with ancillary goods and services such as electricity and various services intended to ensure the use of those servers under optimal conditions, do not constitute services connected with immovable property within the meaning of those provisions, where those customers do not enjoy a right of exclusive use of that part of the building in which the IT equipment cabinets are installed.

Costs

64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

1. **Article 135(1)(l) of Council Directive 2006/112/EC of 28 November 2006, on the common system of value added tax, as amended by Council Directive 2008/8/EC of 12 February 2008, must be interpreted as meaning that colocation centre services by which the supplier of those services provides its customers with IT equipment cabinets for holding their servers and provides them with ancillary goods and services, such as electricity and various services intended to ensure the use of those servers under optimal conditions, do not constitute the leasing or letting of immovable property falling within the exemption from value added tax provided for by that provision, since – which is for the referring court to ascertain – first, that supplier does not provide an area or space to its customers passively, guaranteeing them the right to occupy it as if they were the owners and secondly, the IT equipment cabinets do not form an integral part of the building in which they are installed nor are they installed there permanently.**

2. **Article 47 of Directive 2006/112, as amended by Directive 2008/8, and Article 31a of Council Implementing Regulation No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112, as amended by Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013, must be interpreted as meaning that colocation centre services by which the supplier of those services provides its customers with IT equipment cabinets for holding their servers and provides them with ancillary goods and services, such as electricity and various services intended to ensure the use of those servers under optimal conditions, do not constitute services connected with**

immovable property within the meaning of in those provisions, where those customers do not enjoy – which is for the referring court to ascertain – a right to exclusive use of the part of the building in which the IT equipment cabinets are installed.

[Signatures]