

Order of the Court (Eighth Chamber) of 9 December 2011 – Connoisseur Belgium v Belgische Staat

(Case C-69/11)

Article 104(3), first subparagraph, of the Rules of Procedure – Sixth VAT Directive – Article 11(A)(1)(a) – Taxable amount – Costs not charged by the taxable person

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Taxable amount – Provision of services – Consideration actually received by the provider – Costs that were not charged but that could have been under the contract – Excluded (Council Directive 77/388, Art. 11(A)(1)(a)) (see para. 22, operative part)

Re:

Reference for a preliminary ruling – Rechtbank van eerste aanleg te Brugge – Interpretation of Article 11(A)(1)(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 (OJ 1977 L 145, p. 1) and of Article 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) – Hiring-out of pleasure craft – Agreement on the allocation of costs between the undertaking providing the craft for hire and the undertaking hiring them – Possible to charge certain costs to the hiring undertaking – No charge made – National provision requiring VAT to be paid on those uncharged costs.

Operative part

On a proper construction of Article 11(A)(1)(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, in circumstances such as those of the case in the main proceedings, value added tax is not due on costs or amounts that could contractually have been charged, but were not, by the taxable person to the other contracting party.