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Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 26 March 2018 — IDEALMED III — Serviços de Saúde, S.A. v Autoridade Tributária e Aduaneira

(Case C-211/18)

(2018/C 240/20)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: IDEALMED III — Serviços de Saúde, S.A.

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1.

Does Article 132(1)(b) of Council Directive 2006/112/EC (1) of 28 November 2006 on the common system of value added tax ('the VAT Directive') preclude a hospital owned by a company governed by private law, which has concluded agreements for the provision of medical care with the State and with legal persons governed by public law, from being deemed to have started to operate under social conditions comparable with those applicable to bodies governed by public law, as referred to in that provision, where the following conditions are met:

—

more than 54,5 % of revenue, including sums invoiced to the relevant user-beneficiaries, comes from State bodies and public health subsystems, at the prices stipulated in the agreements concluded with them;

—

more than 69 % of users are beneficiaries of public health subsystems or receive services provided within the framework of agreements concluded with State bodies;

—
more than 71 % of medical services are carried out under agreements concluded with public health subsystems and with State bodies; and
—

the activity carried out is of significant general public interest?

2.

In view of the fact that, in accordance with Article 377 of the VAT Directive, Portugal chose to continue to exempt from VAT transactions carried out by hospitals not referred to in Article 132(1)(b) of that directive, that it granted such taxable persons the right to opt for taxation of those transactions under Article 391 of the directive, provided that they continue to be taxed for a minimum period of five years, and that it provides that they may become subject to the exemption scheme again only if they make an express declaration to that effect, does Article 391 and/or the principles of the protection of acquired rights and of legitimate expectations, equality and non-discrimination, neutrality and non-distortion of competition in relation to users and taxable persons which are bodies governed by public law, preclude the taxation and customs authority from imposing the exemption scheme before that period has elapsed, since it considers that the taxable person has started to provide services under social conditions comparable with those applicable to bodies governed by public law?

3.

Do Article 391 of the VAT Directive and/or the abovementioned principles preclude a new law from requiring the application of the exemption scheme to taxable persons who previously opted for the taxation scheme, before the five-year period has elapsed?

4.

Do Article 391 of the VAT Directive and the abovementioned principles preclude legislation in accordance with which a taxable person, who opted for application of the taxation scheme because, at the time when he opted for that scheme, he was not providing healthcare services under social conditions comparable with those applicable to bodies governed by public law, can continue to be subject to that scheme if he starts to provide such services under social conditions comparable with those applicable to bodies governed by public law?

(1) OJ 2006 L 347, p. 1.