62019CJ0077
JUDGMENT OF THE COURT (Second Chamber)

18 November 2020 (*1)

(Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Article 132(1)(f) – Exemption of supplies of services made by independent groups of persons to their members – Applicability to VAT groups – Article 11 – VAT group)

In Case C?77/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the First-tier Tribunal (Tax Chamber), United Kingdom, made by decision of 30 January 2019, received at the Court on 1 February 2019, in the proceedings

Kaplan International Colleges UK Ltd

v

The Commissioners for Her Majesty’s Revenue & Customs,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Second Chamber, A. Kumin, T. von Danwitz and P.G. Xuereb (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 23 January 2020,

after considering the observations submitted on behalf of:

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Kaplan International Colleges UK Ltd, by R. Woolich and M. Murcia, Solicitors, and by R. Hill, Barrister,

–

the United Kingdom Government, by S. Brandon, J. Kraehling and Z. Lavery, acting as Agents, and by O. Thomas QC,

–

the European Commission, by A. Armenia and R. Lyal, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 April 2020,

gives the following

Judgment

1

This request for a preliminary ruling concerns the interpretation of Article 132(1)(f) 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), (‘Directive 2006/112’).

2

The request has been made in proceedings between Kaplan International Colleges UK Limited (‘KIC’) and the Commissioners for Her Majesty’s Revenue and Customs (‘HMRC’) concerning the refusal by the latter to grant KIC the exemption from value added tax (VAT) laid down for costs-sharing groups (CSGs) (‘independent groups of persons’).

Legal context

EU law

3

Recitals 25 and 35 of Directive 2006/112 state:

‘(25)

The taxable amount should be harmonised so that the application of VAT to taxable transactions leads to comparable results in all the Member States.

…

(35)

A common list of exemptions should be drawn up so that the Communities’ own resources may be collected in a uniform manner in all the Member States.’

4

Article 2(1)(c) of that directive provides:

‘The following transactions shall be subject to VAT:

…

(c)

the supply of services for consideration within the territory of a Member State by a taxable person acting as such.’

5

The first subparagraph of Article 9(1) of that directive provides:

‘“Taxable person” shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.’

6

Under Article 11 of Directive 2006/112:

‘After consulting the advisory committee on value added tax …, each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

A Member State exercising the option provided for in the first paragraph may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.’

7

Article 131 of that directive provides:

‘The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.’

8

Article 132(1) of that directive provides:

‘Member States shall exempt the following transactions:

…

(f)

the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition;

…

(i)

the provision of children’s or young people’s education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects;

…’

UK law

9

Group 16 of Schedule 9 to the Value Added Tax Act 1994 (‘the 1994 Act’), by which Article 132(1)(f) of Directive 2006/112 was transposed into national law, provides that the following are exempt:

‘…

1 The supply of services by an independent group of persons where each of the following conditions is satisfied:

(a)

each of those persons is a person who is carrying on an activity (“the relevant activity”) which is exempt from VAT or in relation to which the person is not a taxable person within the meaning of Article 9 of [Directive 2006/112],

(b)

the supply of services is made for the purpose of rendering the members of the group the services directly necessary for the exercise of the relevant activity,

(c)

the group merely claims from its members exact reimbursement of their share of the joint expenses, and

(d)

the exemption of the supply is not likely to cause distortion of competition.’

10

Group 6 of Schedule 9 to the 1994 Act provides for the exemption of educational services.

11

Section 7A of that act, headed ‘Place of supply of services’, provides:

‘(1) This section applies for determining, for the purposes of this Act, the country in which services are supplied.

(2) A supply of services is to be treated as made

(a)

in a case in which the person to whom the services are supplied is a relevant business person, in the country in which the recipient belongs, and

(b)

otherwise, in the country in which the supplier belongs.

(3) The place of supply of a right to services is the same as that in which the supply of the services would be treated as made if made by the supplier of the right to the recipient of the right

(whether or not the right is exercised); and for this purpose a right to services includes any right, option or priority with respect to the supply of services and an interest deriving from a right to services.

(4) For the purposes of this Act a person is a relevant business person in relation to a supply of services if the person:

(a)

is a taxable person within the meaning of Article 9 of [Directive 2006/112],

(b)

is registered under this Act,

(c)

is identified for the purposes of VAT in accordance with the law of a Member State other than the United Kingdom, …

…

and the services are received by the person otherwise than wholly for private purposes.

…'

12

Section 8 of that act, which provides for the reverse charge mechanism, states:

'(1) Where services are supplied by a person who belongs in a country other than the United Kingdom in circumstances in which this subsection applies, this Act has effect as if (instead of there being a supply of the services by that person)

(a)

there were a supply of the services by the recipient in the United Kingdom in the course or furtherance of a business carried on by the recipient, and

(b)

that supply were a taxable supply.

(2) Subsection (1) above applies if

(a)

the recipient is a relevant business person who belongs in the United Kingdom, and

(b)

the place of supply of the services is inside the United Kingdom, and, where the supply of the services is one to which any paragraph of Part 1 or 2 of Schedule 4A applies, the recipient is registered under this Act.

(3) Supplies which are treated as made by the recipient under subsection (1) above are not to be

taken into account as supplies made by him when determining any allowance of input tax in his case under section 26(1).

…’

13

As regards the concept of a group of persons which may be regarded as a single taxable person for VAT purposes (‘VAT group’), the United Kingdom, exercising the option provided for in Article 11 of Directive 2006/112, adopted section 43 of the 1994 Act, according to which:

‘(1) Where under [sections 43A to 43D] any bodies corporate are treated as members of a group, any business carried on by a member of the group shall be treated as carried on by the representative member, and

(a)

any supply of goods or services by a member of the group to another member of the group shall be disregarded; and

(b)

any supply which is a supply to which paragraph (a) above does not apply and is a supply of goods or services by or to a member of the group shall be treated as a supply by or to the representative member; and

(c)

any VAT paid or payable by a member of the group on the acquisition of goods from another Member State or on the importation of goods from a place outside the Member States shall be treated as paid or payable by the representative member and the goods shall be treated,

(i)

in the case of goods acquired from another Member State, for the purposes of section 73(7); and

(ii)

in the case of goods imported from a place outside the Member States, for those purposes and the purposes of section 38,

as acquired or, as the case may be, imported by the representative member; and all members of the group shall be liable jointly and severally for any VAT due from the representative member.’

14

Under section 43(1AA) of that act, where:

‘(a)

it is material, for the purposes of any provision made by or under this Act (“the relevant provision”), whether the person by or to whom a supply is made, or the person by whom goods are acquired or imported, is a person of a particular description,

(b)

paragraph (b) or (c) of subsection (1) above applies to any supply, acquisition or importation, and

(c)

there is a difference that would be material for the purposes of the relevant provision between

(i)

the description applicable to the representative member, and

(ii)

the description applicable to the body which (apart from this section) would be regarded for the purposes of this Act as making the supply, acquisition or importation or, as the case may be, as being the person to whom the supply is made,

the relevant provision shall have effect in relation to that supply, acquisition or importation as if the only description applicable to the representative member were the description in fact applicable to that body.'

15

Section 43(1AB) of the act provides:

'Subsection (1AA) above does not apply to the extent that what is material for the purposes of the relevant provision is whether a person is a taxable person.'

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

16

KIC is the holding company of the Kaplan corporate group, which provides educational and career development services. That group has nine subsidiary companies established in the United Kingdom ('the Kaplan colleges'), each of which runs a higher education college in the United Kingdom ('the international colleges'), in collaboration with one or more British universities.

17

In respect of the educational services which they provide to students, the Kaplan colleges qualify for the exemption from VAT provided for in Article 132(1)(i) of Directive 2006/112.

18

Of the international colleges, eight are 100% owned by KIC. The remaining college, the University of York International Pathway College, is owned in the amount of 55% by the University of York (United Kingdom) and in the amount of 45% by KIC.

19

KIC is also the representative member of a VAT group of which each Kaplan college is also a member, with the exception of the University of York International Pathway College, as the latter is not a wholly or majority owned subsidiary of KIC.

20

Each of the international colleges has its own management and governance structure, which consists of representatives from the Kaplan college and relevant university.

21

Prior to October 2014, contracts between educational recruitment agents for the Kaplan colleges and KIC were concluded in the United Kingdom, and KIC was thus in direct contact with those agents in order to recruit overseas students to the international colleges. Those agents received assistance from representative offices, which provided them with operational support and were located in the key markets concerned, namely China, Hong Kong, India and Nigeria. Those representative offices were members of the Kaplan group, with the exception of an office in Vietnam, and made supplies of services to KIC in return for payment. KIC was liable to VAT in the United Kingdom under the reverse charge mechanism on the services supplied by the representative offices and by the agents.

22

In October 2014, the Kaplan group established Kaplan Partner Services Hong Kong Limited (‘KPS’), a company limited by shares established in Hong Kong, owned equally by the nine Kaplan colleges as members. KPS has 20 employees and operates under the terms of a membership agreement. With one exception, KPS does not provide services to non-members.

23

Since October 2014, KPS has taken on responsibilities which were formerly carried out by KIC and has centralised some functions which, prior to that date, were carried out by the representative offices. KPS also manages the representative office network worldwide. Since that network has expanded and there is an increased level of activity between KPS and the representative offices, those offices are now tasked with the day-to-day management of agents.

24

KPS is also responsible for managing agents in East and South East Asia, which enables it to provide an agent service centre in the same time zone as the international colleges’ recruitment markets. Those agents do not have an exclusive relationship with KPS and are entitled to work with the Kaplan colleges’ competitors as well as with the universities concerned. In order to carry out their task, agents working for KPS are given support which is designed to encourage them to recommend the international colleges managed by the Kaplan colleges.

25

The agents invoice their services to KPS, which pays them directly. No VAT is charged on the services supplied by the agents to KPS, by the representative offices to KPS or by KPS. KPS prepares a separate invoice in respect of the sums owed to agents for services supplied to the relevant Kaplan college, although KIC is the representative member of the VAT group of which those colleges are members. Each Kaplan college is charged for the services provided by KPS and the representative offices.

26

The dispute in the main proceedings concerns three types of supply of services, which are regarded, under national law, as being supplied by KPS to KIC as the representative member of the VAT group: first, services supplied by the agents to KPS; second, services supplied by the representative offices to KPS; and, third, activities such as, inter alia, support provided to the agents by KPS.

27

By an appeal brought before the First-tier Tribunal (Tax Chamber) (United Kingdom), KIC challenges two HMRC decisions under which the services regarded as being supplied to it by KPS do not come within the scope of the VAT exemption provided for in Article 132(1)(f) of Directive 2006/112 and are therefore subject to VAT.

28

KIC submits that those services are caught by the exemption laid down in that provision and that, consequently, it is not obliged, as the representative member of the VAT group, to pay the VAT due on those supplies under the reverse charge mechanism. According to KIC, the services which were previously supplied to it by the agents and representative offices and which were subject to VAT are now exempt from VAT as a result of the creation of KPS.

29

The First-tier Tribunal (Tax Chamber) states that there are commercial reasons for setting up KPS in Hong Kong and that it is not alleged that that entity is artificial or that its establishment gives rise to an abuse of rights.

30

That tribunal also states that it is not disputed that KPS provides to its members, that is to say, the Kaplan colleges, the services directly necessary for the exercise of their exempt activities and that KPS merely claims from its members exact reimbursement of their share of the joint expenses.

31

According to the referring tribunal, resolution of the dispute in the main proceedings rests on the interpretation of Article 132(1)(f) of Directive 2006/112.

32

In those circumstances, the First-tier Tribunal (Tax Chamber) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1)

What is the territorial scope of the exemption contained in Article 132(1)(f) of [Directive 2006/112]? In particular … does it extend to a CSG which is established in a Member State other than the Member State or Member States of the members of the CSG? And if so, … does it also extend to a CSG which is established outside of the [European Union]?

(2)

If the CSG exemption is in principle available to an entity established in a different Member State from one or more members of the CSG and also to a CSG established outside the [European Union], how should the criterion that the exemption should not be likely to cause distortion of competition be applied? In particular:

(a)

Does it apply to potential distortion which affects other recipients of similar services which are not members of the CSG or does it only apply to potential distortion which affects potential alternative providers of services to the CSG’s members?

(b)

If it applies only to other recipients, can there be a real possibility of distortion if other recipients who are not members of the CSG are able either to apply to join the CSG in question, or to set up their own CSG to obtain similar services, or to obtain equivalent VAT savings by other methods (such as by setting up a branch in the Member State or third State in question)?

(c)

If it applies only to other providers, is the real possibility of distortion to be assessed by determining whether the CSG is assured of keeping its members’ custom, irrespective of the availability of the VAT exemption – and therefore to be assessed by reference to the access of alternative providers to the national market in which the members of the CSG are established? If so, does it matter whether the CSG is assured of keeping its members’ custom because they are part of the same corporate group?

(d)

Should potential distortion be assessed at a national level in relation to alternative providers in the third State where the CSG is established?

(e)

Does the tax authority in the [European Union] which administers [Directive 2006/112] bear an evidential burden to establish the likelihood of distortion?

(f)

Is it necessary for the tax authority in the [European Union] to commission specific expert evaluation of the market of the third State where the CSG is established?

(g)

Can the presence of a real possibility of distortion be established by the identification of a

commercial market in the third State?

(3)

Can the CSG exemption apply in the circumstances of this case where the members of the CSG are linked to one another by economic, financial or organisational relationships?

(4)

Can the CSG exemption apply in circumstances where the members have formed a VAT group, which is a single taxable person? Does it make a difference if KIC, the representative member to whom (as a matter of national law) the services are supplied, is not a member of the CSG? And, if it does make a difference, is this difference eliminated by national law stipulating that the representative member possesses the characteristics and status of the members of the CSG for the purpose of applying the CSG exemption?'

Consideration of the questions referred

The third and fourth questions

33

By its third and fourth questions, which it is appropriate to examine together and first of all, the referring tribunal asks, in essence, whether Article 132(1)(f) of Directive 2006/112 must be interpreted as meaning that the exemption laid down in that provision applies to supplies of services by an independent group of persons whose members form a VAT group, within the meaning of Article 11 of that directive, where those supplies of services are made to that VAT group. If so, the referring tribunal asks, first, whether the fact that the representative member of the VAT group is not a member of that independent group of persons makes a difference as to whether the exemption provided for in Article 132(1)(f) of Directive 2006/112 applies and, secondly, whether that difference may be eliminated by national law.

34

As a preliminary point, it should be noted that it follows from the exemption provided for in Article 132(1)(f) of Directive 2006/112 that the independent group of persons is a taxable person in its own right, separate from its members. It is clear from the very wording of that provision that the independent group of persons is independent, and that it therefore makes supplies of services independently, within the meaning of Article 9 of Directive 2006/112. Furthermore, if the services supplied by the independent group of persons were not services supplied by a taxable person acting as such, those services would not be subject to VAT, under Article 2(1)(c) of Directive 2006/112. Those services would therefore not be capable of forming the subject matter of an exemption, such as that set out in Article 132(1)(f) of that directive (judgment of 4 May 2017, Commission v Luxembourg, C?274/15, EU:C:2017:333, paragraph 61).

35

It should also be borne in mind that, under Article 132(1)(f) of Directive 2006/112, Member States are required to exempt the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition.

36

In that regard, it is apparent from recitals 25 and 35 of Directive 2006/112 that that directive seeks to harmonise the taxable amount for VAT and that the exemptions from that tax constitute independent concepts of EU law which, as the Court has previously held, must be placed in the general context of the common system of VAT introduced by that directive (see, to that effect, judgment of 20 November 2019, Infohos, C?400/18, EU:C:2019:992, paragraph 29 and the case-law cited).

37

In addition, it is clear from settled case-law that the terms used to specify the exemptions from VAT set out in Article 132 of Directive 2006/112 must be interpreted strictly, since those exemptions constitute exceptions to the general principle that all services supplied for consideration by a taxable person are subject to that tax. 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 Article 132 should be construed in such a way as to deprive the exemptions of their intended effects. It is not the purpose of the case-law of the Court to impose an interpretation which would make the exemptions concerned almost inapplicable in practice (judgment of 4 May 2017, Commission v Luxembourg, C?274/15, EU:C:2017:333, paragraph 50 and the case-law cited).

38

As regards the wording of Article 132(1)(f) of Directive 2006/112, as pointed out in paragraph 35 above, the exemption laid down in that provision applies to supplies of services made by independent groups of persons for the benefit of their members. It is not apparent from that wording that supplies of services made by such groups to their members are excluded from the scope of that exemption where the members form a VAT group, within the meaning of Article 11 of Directive 2006/112. That said, in the light of the very wording of Article 132(1)(f) of Directive 2006/112, the formation of such a VAT group cannot have the effect of extending the application of that exemption to supplies of services to entities which are not members of the independent group of persons.

39

In accordance with settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 20 November 2019, Infohos, C?400/18, EU:C:2019:992, paragraph 33 and the case-law cited).

40

As regards the context of Article 132(1)(f) of Directive 2006/112, it must be stated that that provision appears in Chapter 2, entitled ‘Exemptions for certain activities in the public interest’, in Title IX of that directive. That heading indicates that the exemption provided for in that provision covers only independent groups of persons whose members carry on activities in the public interest (judgment of 21 September 2017, Commission v Germany, C?616/15, EU:C:2017:721, paragraph 44).

41

That context does not reveal any factors which would exclude from that exemption independent groups of persons whose members form a VAT group, within the meaning of Article 11 of Directive 2006/112, provided, however, that all of the members of those groups carry on activities in the public interest.

42

As regards the aim of Article 132(1)(f), within Directive 2006/112, it is necessary to recall the purpose of all of the provisions of Article 132 of that directive, which is to exempt from VAT certain activities in the public interest with a view to facilitating access to certain services and the supply of certain goods by avoiding the increased costs that would result if they were subject to VAT (judgment of 21 September 2017, Aviva, C?605/15, EU:C:2017:718, paragraph 28 and the case-law cited).

43

Thus, the services provided by an independent group of persons come within the exemption provided for in Article 132(1)(f) of Directive 2006/112 where the provision of those services contributes directly to the exercise of activities in the public interest referred to in Article 132 of that directive (judgment of 21 September 2017, Aviva, C?605/15, EU:C:2017:718, paragraph 29 and the case-law cited).

44

In those circumstances, it must be held that, in principle, supplies of services by an independent group of persons to its members which form a VAT group come within the exemption provided for in Article 132(1)(f) of Directive 2006/112 where those supplies contribute directly to the exercise of activities in the public interest referred to in Article 132 of the directive. By contrast, that exemption cannot apply to supplies of services received by members of a VAT group which are not also members of the independent group of persons carrying on such activities in the public interest.

45

In that regard, it should be borne in mind that the effect of implementing the scheme established in Article 11 of Directive 2006/112 is that national legislation adopted on the basis of that provision allows persons, in particular companies, which are bound to one another by financial, economic and organisational links no longer to be treated as separate taxable persons for the purposes of VAT but to be treated as a single taxable person. Thus, where that provision is implemented by a Member State, the closely linked person or persons within the meaning of that provision cannot be treated as a taxable person or persons, within the meaning of the first subparagraph of Article 9(1) of Directive 2006/112 (see, to that effect, judgment of 22 May 2008, Ampliscientifica and Amplifin, C?162/07, EU:C:2008:301, paragraph 19).

46

It follows that treatment as a single taxable person precludes members of a VAT group from continuing to submit VAT declarations separately and from continuing to be identified, within and outside their group, as individual taxable persons, since the single taxable person alone is authorised to submit such declarations. It follows that, in such a situation, supplies of services made by a third party to a member of a VAT group must be considered, for VAT purposes, to have been made not to that member but to the actual VAT group to which that member belongs

(judgment of 17 September 2014, Skandia America (USA), filial Sverige, C?7/13, EU:C:2014:2225, paragraph 29).

47

Therefore, for VAT purposes, services supplied by an independent group of persons to members of a VAT group cannot be regarded as being supplied to those members individually, but must be regarded as being supplied to the VAT group as a whole (see, by analogy, judgment of 17 September 2014, Skandia America (USA), filial Sverige, C?7/13, EU:C:2014:2225, paragraph 30).

48

It follows that such services are deemed to be supplied to the VAT group concerned, as a whole, and therefore also to the representative body of the VAT group. Accordingly, if that body were not also a member of the independent group of persons, application of the exemption provided for in Article 132(1)(f) of Directive 2006/112 would benefit non-members of the independent group of persons.

49

However, that provision expressly refers only to supplies of services by independent groups of persons to their members. It does not refer to supplies of services by an independent group of persons to a VAT group whose members are not also all members of that independent group of persons. Since the conditions for exemption are precisely formulated, any interpretation which broadens the scope of Article 132(1)(f) of Directive 2006/112 would be incompatible with the objective of that provision (see, to that effect, judgment of 15 June 1989, Stichting Uitvoering Financiële Acties, 348/87, EU:C:1989:246, paragraph 14).

50

That conclusion cannot, in the light of the considerations set out in paragraphs 36 and 49 above, be affected by provisions of national law which provide that the representative member of the VAT group is to possess the characteristics and status of the members of the independent group of persons concerned for the purposes of applying the exemption provided for in Article 132(1)(f) of Directive 2006/112. Since that exemption is an independent concept of EU law, its application is subject to the condition that all the members of the VAT group be members of that independent group of persons. If that condition is not fulfilled, those provisions of national law cannot lead to the application of that exemption.

51

Consequently, in so far as it is apparent from the order for reference that the independent group of persons at issue in the main proceedings supplied services for consideration to a VAT group one of whose members was not a member of that independent group of persons, that independent group of persons cannot benefit from the exemption provided for in Article 132(1)(f) of Directive 2006/112 and the supply of such services constitutes a taxable transaction under Article 2(1)(c) of Directive 2006/112.

52

That finding is not affected by the judgment of 20 November 2019, Infohos (C?400/18, EU:C:2019:992), in which the Court held, in essence, in paragraphs 42 to 44, that the VAT exemption provided for in Article 13A(1)(f) 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), which corresponds to Article 131 and Article 132(1)(f) of Directive 2006/112, is not subject to the condition that the supplies of services in question be provided only to members of the independent group of persons concerned. This means, first, that only supplies of services to members of that independent group of persons are exempt under that provision, in so far as those services are supplied within the objectives for which such a group has been set up and are therefore provided in accordance with its purpose. Second, supplies of services to persons who are not members of that independent group of persons cannot benefit from that exemption, since such supplies of services do not come within the scope of the exemption and remain subject to VAT, in accordance with Article 2(1) of that directive.

53

In the case which gave rise to the judgment of 20 November 2019, Infohos (C?400/18, EU:C:2019:992), the supplies of services at issue were made to members of the independent group of persons concerned and to persons who were neither members of that group of persons nor formed, together with the members of that independent group of persons, a VAT group, within the meaning of Article 11 of Directive 2006/112. In that case, there was no risk of extending the scope of the exemption provided for in Article 13A(1)(f) of Sixth Directive 77/388.

54

In the present case, since supplies of services by an independent group of persons to a member of such a VAT group must be regarded, for VAT purposes, as having been made not to that member but to the VAT group to which that member belongs, the scope of the exemption provided for in Article 132(1)(f) of Directive 2006/112 risks being extended unless all the members of that VAT group are also members of the independent group of persons concerned.

55

In the light of all of the foregoing considerations, the answer to the third and fourth questions is that Article 132(1)(f) of Directive 2006/112 must be interpreted as meaning that the exemption laid down in that provision is not applicable to supplies of services made by an independent group of persons to a VAT group, within the meaning of Article 11 of that directive, where not all the members of the VAT group are members of that independent group of persons. The existence of provisions of national law which require that the representative member of such a VAT group possess the characteristics and status of the members of the independent group of persons concerned, for the purposes of application of the exemption laid down for independent groups of persons, has no bearing in that regard.

The first and second questions

56

Having regard to the answer given to the third and fourth questions, there is no need to answer the first and second questions.

Costs

57

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 (Second Chamber) hereby rules:

Article 132(1)(f) 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 the exemption laid down in that provision is not applicable to supplies of services made by an independent group of persons to a group of persons that may be regarded as a single taxable person, within the meaning of Article 11 of that directive, where not all the members of that latter group are members of that independent group of persons. The existence of provisions of national law which require that the representative member of such a group of persons possess the characteristics and status of the members of the independent group of persons concerned, for the purposes of application of the exemption for independent groups of persons, has no bearing in that regard.

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Lenaerts

Kumin

von Danwitz

Xuereb

Delivered in open court in Luxembourg on 18 November 2020.

A. Calot Escobar

Registrar

A. Arabadjiev

President of the Second Chamber

(*1) Language of the case: English.