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Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 10 July 2019 — F-AG v Tax Office Y

(Case C-528/19)

(2019/C 328/27)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant, and Appellant in the appeal on a point of law: F-AG

Defendant, and Respondent in the appeal on a point of law: Tax Office Y

Questions referred

1.

In circumstances such as those of the main proceedings, in which a taxable person carries out construction works on a municipal road on behalf of a city, is that taxable person, which has procured from other taxable persons services relating to the construction of the road that has been transferred to the municipality, entitled to deduct input tax in respect thereof pursuant to Article 17(2)(a) of the Sixth Council Directive 77/388/EEC (1) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes?

2.

If the answer to Question 1 is in the affirmative: In circumstances such as those of the main proceedings, in which a taxable person carries out construction works on a municipal road on behalf of a city, does a supply of goods for consideration exist when the authorisation to operate a quarry is the consideration for the supply of a road?

3.

If the answer to Question 2 is in the negative: In circumstances such as those of the main proceedings, in which a taxable person carries out construction works on a municipal road on behalf of a city, is the free-of-charge transfer of the public road to the municipality treated, in accordance with Article 5(6) of Council Directive 77/388/EEC of 17 May 1977 on the

harmonisation of the laws of the Member States relating to turnover taxes, as a supply of goods free of charge even though the transfer serves commercial purposes, in order to prevent an untaxed final consumption by the municipality?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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).