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Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 30 July 2019 — FRENETIKEXITO — UNIPESSOAL, LDA v Autoridade Tributária e Aduaneira

(Case C-581/19)

(2019/C 383/47)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: FRENETIKEXITO — UNIPESSOAL

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1.

Where, as occurs in this case, a company

(a)

carries on, principally, fitness and physical well-being activities and, on a secondary basis, human health activities, which include nutrition services, nutrition/dietary advice, fitness assessment services and massages; and

(b)

offers its customers plans that include only fitness services and plans that include nutrition services in addition to fitness services,

for the purposes of Article 2(1)(c) of Directive 2006/112/EC of 28 November 2006, (1) must the human health activity, and the nutrition service in particular, be regarded as ancillary to the fitness and physical well-being activity, with the effect that the ancillary supply must be given the same tax treatment as the principal supply, or, on the contrary, must the human health activity, and the nutrition service in particular, be regarded as independent of and distinct from the fitness and physical well-being activity, with the effect that the tax treatment established for each of those

activities will apply to that activity?

2.

For the purposes of applying the exemption under Article 132(1)(c) of Directive 2006/112/EC of 28 November 2006, must the services listed in that article actually be supplied, or is it sufficient in order for that exemption to apply that they are merely made available, so that use of those services depends solely on the wishes of the customer?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).