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Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 19 November 2019 — Super Bock Bebidas, S.A. v Autoridade Tributária e Aduaneira

(Case C-837/19)

(2020/C 54/33)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Super Bock Bebidas, S.A.

Defendant: Autoridade Tributária e Aduaneira

Question referred

1.

Was a new Member State permitted, pursuant to the second paragraph of Article 17(6) of the Sixth Council Directive (1) of 17 May 1977 (which states that Member States ‘may retain all the exclusions provided for under their national laws when this Directive comes into force’), to introduce exclusions from the right to deduct VAT into its domestic legislation on the date of its accession?

2.

Is the scope of the second paragraph of Article 17(6) of the Sixth Council Directive the same as that of the second paragraph of Article 176 of Council Directive 2006/112/EC (2) of 28 November 2006 (which states that Member States that acceded to the Community after 1 January 1979 may retain all the exclusions provided for under their national laws on the date of their accession), as regards the relevant date for determining which ‘exclusions provided for under their national laws’ may be retained?

3.

If, under the Sixth Directive, Portugal was able to retain all the exclusions provided for under its national laws on 1 January 1989 (the date on which the Sixth Directive came into force in

Portugal), was that possibility altered by Directive 2006/112/EC, in which the relevant date is given as the date of accession (1 January 1986)?

4.

Is it contrary to the second paragraph of Article 176 of Council Directive 2006/112/EC of 28 November 2006 that, on the date of Portugal's accession to the European Communities, regulations (such as those in Article 21(1) of the VAT Code) came into force introducing exclusions from the right to deduct tax in respect of certain costs (including the cost of accommodation, food, drink, vehicle leases, fuel and tolls), where those regulations had already been published and were originally intended to come into force before accession but were postponed until the accession date?

5.

Should Article 168(a) of Directive 2006/112 and the neutrality principle be interpreted as precluding a Member State's domestic legislation from retaining regulations containing exclusions from the right to deduct (such as the rules in Article 21(1) of the VAT Code on the cost of accommodation, food, drink, vehicle leases, fuel and tolls) that apply even where it is demonstrated that the goods and services that were purchased were used for the purposes of the taxable person's taxed transactions?

6.

Do Article 176 of Directive 2006/112 and the proportionality principle preclude exclusions from the right to deduct that are not provided for in the directive but which Member States may retain under the second paragraph of Article 176 from applying where it is demonstrated that the costs in question are of a strictly business nature and the goods and services were used for the purposes of the taxable person's taxed transactions?

(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).

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