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Request for a preliminary ruling from the Finanzgericht Berlin-Brandenburg (Germany) lodged on 27 November 2019 — M-GmbH v Finanzamt für Körperschaften

(Case C-868/19)

(2020/C 77/34)

Language of the case: German

Referring court

Finanzgericht Berlin-Brandenburg

Parties to the main proceedings

Applicant: M-GmbH

Defendant: Finanzamt für Körperschaften

Questions referred

1.

Is the first paragraph of Article 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax — the VAT Directive (1)— to be interpreted as precluding the rule set out in point 2 of Paragraph 2(2) of the Umsatzsteuergesetz (German Law on turnover tax) — the UStG — in so far as that rule prohibits a partnership (in this case: a GmbH & Co. KG (a limited partnership in which the general partner is a limited liability company)) the partners of which, apart from the controlling company, are not exclusively persons financially integrated into the controlling company's undertaking pursuant to point 2 of Paragraph 2(2) of the UStG, from being a controlled company within the scope of a tax-group arrangement for turnover-tax purposes?

2.

If Question 1 is answered in the affirmative:

(a)

Is the second paragraph of Article 11 of the VAT Directive — regard being had to the principles of proportionality and neutrality — to be interpreted as being capable of justifying an exclusion of partnerships of the type mentioned in Question 1 from a tax-group arrangement for turnover-tax purposes because, in the case of partnerships, there is no obligation to comply with a required

form for the conclusion and amendment of partnership agreements under national law and there may, in the event of merely verbal agreements, be difficulties in proving the existence of the financial integration of the controlled company in individual cases?

(b)

Is application of the second paragraph of Article 11 of the VAT Directive precluded if the national legislature did not have the intention of preventing tax evasion or avoidance already at the time when it adopted the measure?

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