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6.7.2020

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Official Journal of the European Union

C 222/17

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 23 March 2020 —  
Finanzamt Kiel v Norddeutsche Gesellschaft für Diakonie mbH

(Case C-141/20)

(2020/C 222/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Kiel

Defendant: Norddeutsche Gesellschaft für Diakonie mbH

Questions referred

1.

Is the second subparagraph of Article 4(4) in conjunction with Article 21(1)(a) and Article 21(3) of 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 (Directive 77/388/EEC) to be interpreted as permitting a Member State to designate, instead of the VAT group ('Organkreis', group treated as a single entity for tax purposes), a member of the VAT group ('Organträger', controlling company) as the taxable person?

2.

If question 1 is answered in the negative: Can the second subparagraph of Article 4(4) in conjunction with Article 21(1)(a) and Article 21(3) of Directive 77/388/EEC be invoked in this regard?

3.

Must a strict or lenient standard be applied in the assessment to be carried out in accordance with paragraph 46 of the Larentia + Minerva judgment (2) of the Court of Justice of 16 July 2015, C-108/14 and C-109/14 (EU:C:2015:496, paragraph 44 and 45), as to whether the requirement of financial integration contained in the first sentence of point 2 of Paragraph 2(2) of the Umsatzsteuergesetz (Law on turnover tax) constitutes a permissible measure which is necessary

and appropriate for attaining the objectives seeking to prevent abusive practices or behaviour or to combat tax evasion or tax avoidance?

4.

Are Article 4(1) and the first subparagraph of Article 4(4) of Directive 77/388/EEC to be interpreted as permitting a Member State to regard a person as not being independent within the meaning of Article 4(1) of Directive 77/388/EEC if that person is integrated into the undertaking of another undertaking ('Organträger', controlling company) in financial, economic and organisational terms in such a way that the controlling company is able to impose its will on the person and thus prevent the person from forming his own will, which diverges from that of the controlling company?

(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) Judgment of the Court of Justice of 16 July 2015 (C-108/14 and C-109/14, EU:C:2015:496).