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Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 18 June 2020 —  
Finanzamt T v S

(Case C-269/20)

(2020/C 297/41)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt T

Defendant: S

Questions referred

1.

Is the authorisation granted to Member States in the second subparagraph of Article 4(4) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (1) to treat as a single taxable person persons established in their territory who, while legally independent, are closely bound to one another by financial, economic and organisational links to be exercised in such a way that:

a)

treatment as a single taxable person is effected through one of those persons, who is the taxable person for all of the transactions performed by those persons; or in such a way that:

b)

treatment as a single taxable person must of necessity — and thus, in addition, under sufferance of substantial tax losses — lead to a VAT group separate from the persons closely bound to one another, which constitutes a fictitious entity to be set up specifically for VAT purposes?

2.

If the correct answer to the first question is (a): does it follow from the case-law of the Court of

Justice of the European Union concerning non-business purposes within the meaning of Article 6(2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (judgment of the Court of Justice of the European Union of 12 February 2009 in VNLTO – C-515/07, EU:C:2009:88) that, in the case of a taxable person who

a)

on the one hand, pursues an economic activity and, in so doing, provides services for consideration within the meaning of Article 2(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes, and

b)

on the other hand, pursues at the same time an activity which is incumbent upon him in the exercise of public authority (an activity he carries on in an official capacity) and in respect of which he is not considered to be a taxable person, in accordance with Article 4(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes,

a service falling within the sphere of his economic activity which he provides free of charge for a purpose falling within the sphere of the activity he carries on in an official capacity is not subject to tax, in accordance with Article 6(2)(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes?

(1) OJ 1977 L 145, p. 1.