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Request for a preliminary ruling from the Curtea de Apel Bucureşti (Romania) lodged on 22 July 2020 — Berlin Chemie A. Menarini SRL v Administraţia Fiscală pentru Contribuabili Mijlocii Bucureşti — Direcţia Generală Regională a Finanţelor Publice Bucureşti

(Case C-333/20)

(2020/C 339/03)

Language of the case: Romanian

Referring court

Curtea de Apel Bucureşti

Parties to the main proceedings

Applicant: Berlin Chemie A. Menarini SRL

Defendant: Administraţia Fiscală pentru Contribuabili Mijlocii Bucureşti — Direcţia Generală Regională a Finanţelor Publice Bucureşti

Intervener: Berlin Chemie AG

Questions referred

1.

If a company that carries out supplies of goods in the territory of a Member State other than that in which it has established its business is to be regarded as having, within the meaning of the second sentence of Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (1) and Article 11 of Council Regulation No 282/2011, a fixed establishment in the State in which it carries out those supplies, is it necessary for the human and technical resources employed by that company in the territory of that Member State to belong to it, or is it sufficient for that company to have immediate and permanent access to such human and technical resources through another affiliated company which it controls since it holds the majority of its shares?

2.

If a company that carries out supplies of goods in the territory of a Member State other than that in which it has established its business is to be regarded as having, within the meaning of the second sentence of Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Article 11 of Council Regulation No 282/2011, (2) a fixed

establishment in the State in which it carries out those supplies, is it necessary for the presumed fixed establishment to be directly involved in decisions relating to the supply of the goods, or is it sufficient for that company to have, in the State in which it carries out the supply of goods, technical and human resources that are made available to it through contracts concluded with third party companies for marketing, regulatory, advertising, storage and representation activities which are capable of having a direct influence on the volume of sales?

3.

On a proper construction of the second sentence of Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Article 11 of Council Regulation No 282/2011, does the possibility for a taxable person to have immediate and permanent access to the technical and human resources of another affiliated taxable person controlled by it preclude that affiliated company from being regarded as a service provider for the fixed establishment thus created?

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

(2) Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ 2011 L 77, p. 1).