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1.2.2021

EN

Official Journal of the European Union

C 35/34

Request for a preliminary ruling from the F?városi Törvényszék (Hungary) lodged on 12 November 2020 — DuoDecad Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-96/20)

(2021/C 35/47)

Language of the case: Hungarian

Referring court

F?városi Törvényszék

Parties to the main proceedings

Applicant: DuoDecad Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1.

Must Articles 2(1)(c), 24(1) and 43 of Council Directive 2006/112 be interpreted as meaning that, (1) since the acquirer of a know-how licence — a company established in a Member State of the European Union (in the case of the dispute in the main proceedings, Portugal) — does not provide the services available on a website to end users, it cannot be the recipient of the service of technical support for that know-how that is provided by a taxable person established in another Member State (in the case of the dispute in the main proceedings, Hungary) as a subcontractor, that service being provided, rather, by the taxable person to the grantor of the know-how licence established in the latter Member State, in circumstances in which the acquirer of the licence:

a)

had rented offices in the first Member State, IT and other office infrastructure, its own staff and extensive experience in the field of e-commerce, as well as an owner with extensive international connections and a qualified e-commerce manager;

b)

had obtained know-how reflecting the processes for operating the websites and making updates to them, and issued opinions on, suggested modifications to, and approved those processes;

c)

was the recipient of the service that the taxable person provided on the basis of that know-how;

d)

regularly received reports on the services provided by the subcontractors (in particular, on website traffic and payments made from the bank account);

e)

registered in its own name the internet domains allowing access to the websites via the internet;

f)

was listed on the websites as a service provider;

g)

took steps itself to preserve the popularity of the websites;

h)

itself concluded, in its own name, the contracts with partners and subcontractors that were necessary in order to provide the service (in particular, with banks offering payment by bank card on the websites, with creators providing content accessible on the websites and with webmasters promoting that content);

i)

had a complete system for receiving revenue from providing the service in question to end users, such as bank accounts, full and exclusive powers of disposal over those accounts, an end user database enabling end users to be invoiced for that service and its own invoicing software;

j)

indicated on the websites its own headquarters in the first Member State as the physical customer service centre; and

k)

is a company independent of both the grantor of the licence and the Hungarian subcontractors responsible for carrying out certain technical processes described in the know-how,

given also that: i) the circumstances set out above were confirmed by the relevant authority in the first Member State, in its capacity as the appropriate body to establish the presence of those objective and externally verifiable circumstances; ii) the fact that the company in the other Member State could not access a payment service provider able to guarantee receipt of payments by bank card on the website, with the result that the company established in that Member State never provided the service available on the websites, either before or after the period under examination, constituted an objective obstacle to the provision of that service in that other Member State via the websites; and iii) the company acquiring the licence and its related undertakings derived a profit from the operation of the website that was higher overall than the difference between applying the rate of VAT in the first Member State and in the second respectively?

2.

Must Articles 2(1)(c), 24(1) and 43 of the VAT Directive be interpreted as meaning that, since the grantor of the know-how licence — a company established in the other Member State — provides the services available on a website to end users, it is the recipient of the service of technical support for that know-how provided by the taxable person as a subcontractor, that service not being provided by the taxable person to the acquirer of the licence, established in the first Member State, in circumstances in which the company granting the licence:

a)

had resources of its own consisting solely of a rented office and a computer used by the company manager;

b)

had as its own employees only a manager and a legal adviser who worked a few hours a week on a part-time basis;

c)

had as its only contract the know-how development contract;

d)

ordered that the domain names that it owned be registered by the acquirer of the licence in its own name, in accordance with the contract concluded with the latter;

e)

never appeared as the provider of the services in question in dealings with third parties, in particular end users, banks offering payment by bank card on the websites, creators of content accessible on the websites and webmasters promoting that content;

f)

has never issued any supporting documentation in relation to the services available on the websites, other than the invoice for the licence fees; and

g)

did not have a system (such as bank accounts and other infrastructure) for receiving revenue from the service provided via the websites;

given also that, in accordance with the judgment of 17 December 2015, WebMindLicenses (C-419/14, EU:C:2015:832), the fact that the manager and sole shareholder of the company granting the licence is the creator of the know-how and, moreover, that that person exercises influence or control over the development and exploitation of that know-how and over the supply of the services based on it, with the result that the natural person who is the manager and owner of the company granting the licence is also the manager and/or owner of those subcontracted commercial companies (and, therefore, of the applicant), which work together to provide the service, as subcontractors, on behalf of the acquirer of the licence and perform the abovementioned functions for which they are responsible, does not appear to be decisive in itself?

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