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5.12.2022

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Official Journal of the European Union

C 463/14

Request for a preliminary ruling from the Tribunalul Argeş (Romania) lodged on 9 August 2022 — SC Adient Ltd & Co. KG v Agenţia Naţională de Administrare Fiscală and Agenţia Naţională de Administrare Fiscală — Direcţia Generală Regională a Finanţelor Publice Ploieşti — Administraţia Judeţeană a Finanţelor Publice Argeş

(Case C-533/22)

(2022/C 463/19)

Language of the case: Romanian

Referring court

Tribunalul Argeş

Parties to the main proceedings

Applicant: SC Adient Ltd & Co. KG

Defendants: Agenţia Naţională de Administrare Fiscală and Agenţia Naţională de Administrare Fiscală — Direcţia Generală Regională a Finanţelor Publice Ploieşti — Administraţia Judeţeană a Finanţelor Publice Argeş

Questions referred

1.

Are the provisions of Article 44 of Directive 2006/112/EC on the common system of value added tax (1) and of Articles 10 and 11 of Council Implementing Regulation No 282/2011 laying down implementing measures for [that directive] (2) to be interpreted as precluding the practice of a national tax authority whereby an independent resident legal person is classified as the fixed establishment of a non-resident entity solely on the basis that the two companies belong to the same group?

2.

Are the provisions of Article 44 of Directive 2006/112/EC on the common system of value added tax and of Articles 10 and 11 of Council Implementing Regulation No 282/2011 implementing [that directive] to be interpreted as precluding the practice of a national tax authority whereby it is considered, by reference only to the services supplied to a non-resident entity by a resident legal person, that a fixed establishment of a non-resident entity exists within the territory of a Member State?

3.

Are the provisions of Article 44 of Directive 2006/112/EC on the common system of value added tax and of Articles 10 and 11 of Council Implementing Regulation No 282/2011 laying down implementing measures for [that directive] to be interpreted as precluding tax legislation and the practice of a national tax authority whereby it is considered that a fixed establishment of a non-resident entity exists within the territory of a Member State, given that that fixed establishment supplies only goods and not services?

4.

Where a non-resident person has, within the territory of a Member State, human and technical resources within a resident legal person which are used to ensure the supply of services whereby goods are manufactured — goods which are to be supplied by the non-resident entity — are the provisions of Article 192a(b) of Directive 2006/112/EC on the common system of value added tax and of Article 11 and Article 53(2) of Council Implementing Regulation No 282/2011 laying down implementing measures for [that directive] to be interpreted as meaning that those manufacturing services supplied by means of the technical and human resources of the non-resident legal person are: (i) services received by the non-resident legal person from the resident person by means of those human and technical resources, or, as the case may be, (ii) services provided by the non-resident legal person itself by means of those human and technical resources?

5.

Depending on the answer to Question 4, how is the place of supply of services to be determined with reference to the provisions of Article 44 of Directive 2006/112/EC on the common system of value added tax and of Articles 10 and 11 of Council Implementing Regulation No 282/2011 laying down implementing measures for [that directive]?

6.

In the light of Article 53(2) of Council Implementing Regulation No 282/2011 laying down implementing measures for [Directive 2006/112/EC on the common system of value added tax], should activities linked to the treatment of goods, such as taking delivery, recording inventory, placing orders with suppliers, providing storage areas, managing inventory in the IT system, processing customer orders, indicating the address on transport documents and invoices, providing quality control support, and so on, be disregarded when determining the existence of a fixed establishment, given that they are ancillary administrative activities which are strictly necessary for the manufacture of the goods?

7.

In view of the principles relating to the place of taxation as the place where final consumption takes place, is it relevant for determining the place of supply of the manufacturing services that the goods resulting from those services are mostly (intended to be) sold outside Romania, while those

sold in Romania are subject to VAT, and therefore the result of the services is not 'consumed' in Romania or, if it is 'consumed' in Romania, it is subject to VAT?

8.

Where the technical and human resources of the fixed establishment receiving the services are virtually the same as those of the provider through whom the services are actually performed, is there still a supply of services for the purposes of Article 2(1)(c) of [Directive 2006/112/EC on the common system of value added tax]?

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