Re:

Reference for a preliminary ruling — Corte suprema di cassazione (Italy) — Interpretation of Article 9(2)(e) 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 — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Advertising services — Determination of the place of supply — Supply of services carried out by an undertaking with its head office in the territory of the Community for an undertaking which is established in a third country but which has a tax representative in the territory of a Member State

Operative part of the judgment

With regard to advertising services, where the recipient of the services is established outside the European Community, the place of supply is, as a rule, according to Article 9(2)(e) 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 — Common system of value added tax: uniform basis of assessment, as amended by Tenth Council Directive 84/386/EEC of 31 July 1984, defined as the place where that recipient has his principal place of business. However, Member States may exercise the option provided in Article 9(3)(b) of Sixth Directive 77/388, as amended, and define the place where the services in question are supplied, by way of derogation from that rule, as within the Member State concerned.

If the option available under Article 9(3)(b) of Sixth Directive 77/388, as amended, is exercised, advertising services provided by a supplier established in the European Community to a customer situated in a non-Member state, whether that customer is the final customer or an intermediate customer, are deemed to be supplied within the European Community, provided that the effective use and enjoyment of the services, within the meaning of Article 9(3)(b) of Sixth Directive 77/388, as amended, take place within the Member State concerned. That is the case, with regard to advertising services, where the advertising material being supplied is disseminated from the Member State concerned.

Advertising services provided by a supplier established outside the European Community for his own clients cannot be liable to VAT under Article 9(3)(b) of Sixth Directive 77/388, as amended, even where that supplier acted in the capacity of intermediate customer in respect of an earlier supply of services, since such a supply of services does not fall within the scope of Article 9(2)(e) of that directive or, in more general terms, Article 9 of the directive as a whole, those being provisions which are expressly referred to in Article 9(3)(b) of that directive.

The fact that the supply of services for the purpose of Article 9(3)(b) of Sixth Directive 77/388, as amended, is subject to value added tax does not preclude the taxable person's right to the refund of VAT where he satisfies the conditions laid down in Article 2 of Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory.

Whether a tax representative is appointed does not, of itself, have any effect on whether the services received or provided by the represented person are liable to VAT.

([1]) OJ C 64, 8.3.2008.

Order of the Court (Third Chamber) of 27 November 2008 (reference for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña — Spain) — N.N. Renta SA v Tribunal Económico-Administrativo Regional de Cataluña (TEARC), Generalidad de Cataluña

(Case C-151/08) ([1])

(Article 104(3) of the Rules of Procedure — Sixth VAT Directive — Article 33(1) — Definition of 'turnover taxes' — Duty on transfers of assets and documented legal transactions)

(2009/C 90/09)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña

Parties

Applicant: N.N. Renta SA

Defendant: Tribunal Económico-Administrativo Regional de Cataluña (TEARC), Generalidad de Cataluña

Re:

Reference for a preliminary ruling — Tribunal Superior de Justicia de Cataluña — Interpretation of Art. 33 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 — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Definition of 'turnover taxes' — National duty on capital transfers and documented legal transactions

Operative part of the order

Article 33(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 — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as meaning that it does not preclude the charging of the variable or proportional amount of the duty on transfers of assets and documented legal transactions when it is chargeable on the conclusion of a purchase by an undertaking whose business activity consists of buying and selling immovable property or purchasing immovable property for development or letting.

([1]) OJ C 158, 21.6.2008.

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 4 December 2008 — Friedrich G. Barth v Bundesministerium für Wissenschaft und Forschung

(Case C-542/08)

(2009/C 90/10)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Friedrich G. Barth

Defendant: Bundesministerium für Wissenschaft und Forschung

Questions referred

1. Does the application of a limitation rule providing for a time-limit of three years in which to bring proceedings in cases such as those which are the subject of the main proceedings in which on grounds of a domestic law situation incompatible with Community law, prior to the judgment of the Court of Justice of the European Communities in *Köbler* (Case C-224/01), migrant workers were refused special length-of-service increments constitute for the purposes of Article 39 EC and Article 7(1) of Regulation (EEC) No 1612/68 ([1]) indirect discrimination against migrant workers or a restriction on the right to freedom of movement for workers guaranteed by those provisions?

2. If the first question is answered in the affirmative: Do Article 39 EC and Article 7(1) of Regulation (EEC) No 1612/68 — in cases such as those which are the subject of the main proceedings — preclude the application of such a limitation rule on special length-of-service increments refused to migrant workers prior to the judgment of the Court of Justice of the European Communities in *Köbler* (Case C-224/01) on grounds of a domestic law situation which was incompatible with Community law?

3. In circumstances such as those at issue in the main proceedings, in relation to claims seeking to enforce an entitlement to length-of-service increment previously denied — contrary to Community law — on the basis of unambiguously worded national legislation, does the principle of effectiveness preclude the application of limitation rules providing for a time-limit of three years in which to bring proceedings?

([1]) OJ English Special Edition 1968 (II), p. 475

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 15 January 2009 — Gudrun Schwemmer v Agentur für Arbeit Villingen-Schwenningen — Familienkasse

(Case C-16/09)

(2009/C 90/11)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Gudrun Schwemmer

Respondent: Agentur für Arbeit Villingen-Schwenningen — Familienkasse

Questions referred

1. Is the rule in Article 76(2) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community ([1]) to be applied *mutatis mutandis* to Article 10(a) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 ([2]) in cases where the parent with a right to claim does not apply for the family benefits to which he is entitled in the country of employment?