

Case C-215/19**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

8 March 2019

Referring court:

Korkein hallinto-oikeus (Finland)

Date of the decision to refer:

5 March 2019

Appellant:

Veronsaajien oikeudenvalvontayksikkö

Subject matter of the main proceedings

Value added tax — Leasing of immovable property — Service connected with immovable property — Computing centre service — Directive 2006/112/EC — Implementing Regulation (EU) No 282/2011

Subject matter and legal basis of the reference

The case concerns the interpretation of Article 47 of Council Directive 2006/112/EC on the common system of value added tax ('the VAT Directive') and of Articles 13b and 31a of 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 ('the Implementing Regulation'), as amended by Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services.

Pursuant to the Arvonlisäverolaki (Law on value added tax, 'the AVL'), the Verohallinto (tax administration) issues, on written application, an advance ruling on how the law is to be applied to a transaction of the applicant.

A legally valid advance ruling is to be considered as binding by request of the addressee for the period in respect of which it was issued. A ruling issued by the tax administration on the basis of the AVL in respect of value added taxation may be contested before the Helsingin hallinto-oikeus (Helsinki Administrative Court). The decision of the Administrative Court may be appealed against to the Korkein hallinto-oikeus (Supreme Administrative Court), if the latter grants leave to appeal. The party applying for the advance ruling and the Veronsaajien oikeudenvaltontayksikkö (unit for protecting the rights of tax recipients) are entitled to appeal.

In the present proceedings [the company] A Oy requested an advance ruling from the tax administration. A Oy contested the advance ruling of the tax administration by appealing to the Helsinki Administrative Court. The Administrative Court allowed the company's appeal. The Veronsaajien oikeudenvaltontayksikkö requested the granting of leave to appeal and contested the decision of the Administrative Court by an appeal to the Korkein hallinto-oikeus.

Questions referred

1. Are Articles 13b and 31a of 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, as amended by Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services, to be interpreted as meaning that computing centre services of the type at issue in the main proceedings, with which a trader provides its customers with equipment cabinets in a computing centre for holding customers' servers together with ancillary services, are to be regarded as the leasing or letting of immovable property?
2. If the first question is answered in the negative, are Article 47 of VAT Directive 2006/112/EC and Article 31a of the aforementioned Implementing Regulation nevertheless to be interpreted as meaning that a computing centre service of the type at issue in the main proceedings is to be regarded as a service connected with immovable property, the place of supply of which is the location of the property?

Provisions of EU law cited

Article 47 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

Articles 13b and 31a of 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, as amended by Council Implementing

Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services

Case-law of the Court of Justice cited

Judgment of 27 June 2013, *Minister Finansów v RR Donnelley Global Turnkey Solutions Poland*, C-155/12, EU:C:2013:434, paragraphs 34 to 38

Provisions of national law cited

The VAT Directive and the previously valid 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 were transposed into Finnish law by the Law on value added tax 30.12.1993/1501, with later amendments, which entered into force on 1 June 1994 (indicated in brackets are the numbers of the amending laws forming the basis of the versions of the provisions in force for the period for which the advance ruling was issued).

Under Paragraph 1(1)(1) of the AVL, value added tax is paid to the State for the sale of goods or services that takes place in Finland in the form of an economic activity.

Under Paragraph 27(1) of the AVL, the tax is not paid on the sale of immovable property or the grant of a lease of land or letting of a room, an easement or another comparable right in respect of immovable property. Under Paragraph 27(2), the tax is also not paid on the provision of electricity, gas, heat, water or comparable commodities in connection with the grant of a tax-free right to use immovable property.

Under Paragraph 28 of the AVL (1064/2016), immovable property means immovable property as defined in Article 13b of Council Implementing Regulation (EU) No 282/2011/EC laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

Under Paragraph 65 of the AVL (505/2014), a service provided to a trader acting as such is sold in Finland if it is provided at a permanent establishment of the buyer that is situated there, unless otherwise indicated below. If such a service is not provided at a permanent establishment, it is sold in Finland if the seat of the buyer's economic activity is located there.

Under Paragraph 67(1) of the AVL (1064/2016), services connected with immovable property are sold in Finland if the immovable property is situated there. Under Paragraph 67(2), services of experts and estate agents, accommodation services, the granting of rights to use immovable property and

construction services are, inter alia, regarded as be services connected with immovable property.

Brief summary of the facts and procedure

- 1 *Application to the tax administration for the issuing of an advance ruling*
- 2 A Oy (also ‘the company’) is a nationwide network operator for wireless telecommunications networks. The company’s activity also includes the development of telecommunications networks and network infrastructure.
- 3 The company provides its customers, who are domestic and foreign operators in the IT sector, with computing centre services. The company’s customers use servers belonging to them in order to provide their own customers with data traffic connections. The servers are held in computing centres which are provided with the necessary data traffic connections and in which inter alia humidity and temperature are precisely regulated, in order to support the purpose of use of the servers. The air-conditioned environment for the equipment held in the equipment cabinets is essential for the functioning of the customer’s equipment.
- 4 The computing centre service offered by the company includes an equipment cabinet with a lockable door, electricity and the provision of an environment that is as optimal as possible for the use of the servers. The services connected with the use environment include inter alia the monitoring of temperate and humidity in the server room, cooling, the monitoring of outages in the power supply, smoke alarms in the equipment cabinets for detecting possible equipment fires and electronic access control. The company also takes care inter alia of general cleaning and the replacement of lighting.
- 5 The equipment cabinets are situated in immovable property leased by the company, in which the company has installed several equipment cabinets. The equipment cabinets are two metres high, 0.80 metres wide and one metre deep in dimension. The equipment cabinets are bolted to the floor. The company’s customers hold their own equipment in the equipment cabinets. The equipment is screwed fast to the cabinets and can be removed within a few minutes. The equipment weighs 2 kg to 300 kg and the weight of an entire cabinet including equipment is 20 kg to 500 kg.
- 6 The customers do not have their own key to their equipment cabinet; there is instead a 24-hour security service on the premises. On presentation of identification, a customer receives a key which gives him access to his equipment cabinet. The company is not authorised to go into a customer’s equipment cabinet.
- 7 In the contract, the company and the customer have concluded separate agreements for the rental of the equipment cabinet and for electricity, which is charged for according to use. However, both are charged for under one sum in the

invoice without breakdown. Electricity and transfer of electricity make up around a third of the service. The invoicing takes place monthly.

- 8 As a separate service, the customer can purchase from the company inter alia equipment maintenance, such as resetting of the equipment or the connection of cables. For an additional charge, it is also possible to purchase from the company the installation of equipment in the equipment cabinet. This service is used in particular by foreign customers. The customers also often order other services from the company for an additional charge, such as maintenance services.
- 9 *Advance ruling of the tax administration of 27 February 2017 for the period from 27 February 2017 to 31 December 2018*
- 10 In the advance ruling issued to the company, the tax administration found that the above-described sale of the overall service did not constitute the sale of a service within the meaning of the country of sale provision in Paragraph 65 of the AVL, but rather the sale of a service connected with immovable property pursuant to Paragraph 67 of the AVL, whose country of sale was determined according to the location of the property.
- 11 In its ruling the tax administration took the view that the renting of the equipment holding area required for the server belonging to the customer formed the main service of the overall service described above and was central and essential with regard to the services provided. This therefore involved the grant of a right to use immovable property mentioned in Paragraph 27 of the AVL and a service connected with immovable property within the meaning of Paragraph 67 of the AVL, whose country of sale was determined according to Paragraph 67 of the AVL.
- 12 *Decision of the Helsinki Administrative Court of 27 October 2017*
- 13 A Oy contested the ruling of the tax administration before the Helsinki Administrative Court.
- 14 The company requested that the ruling of the tax administration be annulled and a new advance ruling be issued to the effect that the overall service described constitutes the sale of a service within the meaning of the country of sale provision of Paragraph 65 of the AVL.
- 15 The Helsinki Administrative Court allowed the company's appeal, annulled the ruling of the tax administration and, by way of a new advance ruling, found that the overall service mentioned constituted the sale of a service within the meaning of Paragraph 65 of the AVL. In its order, the Administrative Court referred, as applicable legal rules, to the provisions of Paragraphs 28, 65 and 67(1) of the AVL, Article 47 of the VAT Directive and Articles 13b and 31a of the Implementing Regulation and to the judgment of the Court of Justice in Case C-155/12, *RR Donelley Global Turnkey Solutions Poland*.

- 16 According to the Administrative Court, the issue to be resolved in this case is whether the computing centre service described was to be regarded as a service connected with immovable property, the sale of which was covered by the country of sale provision of Paragraph 67 of the AVL.
- 17 In its decision the Administrative Court took the view that, even though they were bolted to the floor, the equipment cabinets intended for the customers' servers could be moved without destroying or altering the building or construction within the meaning of Article 13b(d) of the Implementing Regulation. The equipment cabinets were not therefore immovable property within the meaning of the Implementing Regulation.
- 18 According to the Administrative Court, a customer of the company does not gain possession of any part of the building forming the computing centre, but merely has the opportunity to use the equipment cabinet located in the computing centre under optimal conditions. The Administrative Court considered that, under the designation computing centre service, the company sold its customers an overall service based on holding the customers' servers, the main service of which consisted in providing the customer with a use environment which is optimal with regard to the functioning of the servers.
- 19 Under these circumstances, the overall service described above could not be regarded as a service connected with immovable property. The country of sale provision of Paragraph 65 of the AVL therefore had to be applied to the sale of the service.

Principal arguments of the parties to the main proceedings

- 20 In its appeal to the Korkein hallinto-oikeus, the *Veronsaajien oikeudenvalvontayksikkö* requested that the decision of the Administrative Court be set aside and the advance ruling of the tax administration, according to which the overall service offered by the company constituted the grant of the right to use immovable property within the meaning of Paragraph 27 of the AVL or alternatively the sale of a service connected with immovable property within the meaning of Paragraph 67 of the AVL, be brought into effect.
- 21 As grounds, the *Veronsaajien oikeudenvalvontayksikkö* argues that the equipment cabinets located in the building are parts of immovable property within the meaning of Article 13b(c) of the Implementing Regulation, without which the computing centre would be defective with regard to its purpose of use. The equipment cabinets can be placed in the building in such a way that they can be moved and replaced. With regard to the application of Article 13b(c) of the Implementing Regulation, it is irrelevant whether the parts of the immovable property, in this case the equipment cabinets, can be moved without destroying or altering the building.

- 22 The *Veronsaajien oikeudenvalvontayksikkö* also takes the view that, regardless of whether the overall service offered by the company is defined as the letting of immovable property or as a different service, the provision of the company's service constitutes a service connected with immovable property, the place of supply of which is the location of the immovable property, that is to say the computing centre.
- 23 According to the *Veronsaajien oikeudenvalvontayksikkö*, the immovable property, that is to say the equipment cabinet of the computing centre, forms an indispensable element of the overall service offered by the company. The immovable property is a central and essential factor for the service provided. It is not possible to provide the service without its underlying immovable property, which proves that the service is supplied with regard to specific immovable property. The overall service offered by the company is derived from an immovable property, since this is used for performing the service and forms the most important and decisive element of the service performance. Therefore, the service is directly linked to immovable property and a service connected with immovable property is involved.
- 24 The *company* argues before the Korkein hallinto-oikeus that the premises let for the activity of the computing centre were originally built for a different purpose. The premises were later adapted to the purpose of the computing centre and will easily be restored to the original state after expiry of the lease.
- 25 The *company* submits that the equipment cabinets located in the computing centre cannot be regarded as parts that are permanently attached to the building. The building is just as complete without the equipment cabinets. The computing centre service is a special activity performed on the immovable property. The equipment cabinets are used for the computing centre activity performed by the company, that is to say equipment used for a special activity is involved. Such equipment will only become part of the immovable property in the event that it cannot be moved without destroying or altering the building itself. The equipment cabinets can be moved without destroying the building or the cabinet itself.

Brief summary of the basis for the reference

- 26 The issue to be resolved in this case is whether the equipment cabinets connected with the computing centre service offered by the company are to be regarded as immovable property within the meaning of Article 13b of the Implementing Regulation. If this question is answered in the negative, it is also to be resolved whether the computing centre service offered by the company is to be regarded as a service connected with immovable property within the meaning of Article 47 of the VAT Directive, the place of supply of which is the location of the property. When assessing the last-mentioned question, consideration is also to be given to Article 31a of the Implementing Regulation, which stipulates the cases in which services are to be regarded as services connected with immovable property.

- 27 In the decision under appeal, the Administrative Court took the view that the equipment cabinets connected with the computing centre service offered by the company did not constitute immovable property within the meaning of Article 13b of the Implementing Regulation. The Administrative Court also considered that the computing centre service offered by the company was not to be regarded as a service connected with immovable property within the meaning of Article 31a of the Implementing Regulation.
- 28 Before the Korkein hallinto-oikeus, the Veronsaajien oikeudenvallvontayksikkö opposes the interpretation, put forward by the Administrative Court in this case, of the provisions referred to in the decision. According to the Veronsaajien oikeudenvallvontayksikkö, the equipment cabinets are immovable property, and the computing centre service offered by the company constitutes a service connected with immovable property, the place of supply of which is the location of the property.
- 29 The Korkein hallinto-oikeus is not aware of any preliminary ruling by the Court of Justice on the application of Article 47 of the VAT Directive and Articles 13b and 31a of the Implementing Regulation to the above-described activity of a company. In the opinion of the Korkein hallinto-oikeus, the aforementioned judgment C-155/12 of the Court of Justice does not provide a direct answer to the question concerning the case now pending.