Case C-58/20

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:

4 February 2020

Referring court:

Bundesfinanzgericht (Austria)

Date of the decision to refer:

30 January 2020

Appellant:

K

Respondent authority:

Finanzamt Linz

Subject matter and legal basis of the dispute in the main proceedings and the request for a preliminary ruling

Exemption from value added tax (‘VAT’) of an outsourced activity (performance of certain tax-related tasks) in connection with the management of special investment funds pursuant to Article 135(1)(g) of Directive 2006/112/EC

Question referred

Must Article 135(1)(g) of Directive 2006/112/EC be interpreted as meaning that the term ‘management of special investment funds’ also covers the tax-related responsibilities entrusted by the management company to a third party, consisting of ensuring that the income received by unit-holders from investment funds is taxed in accordance with the law?

Provisions of EU law cited

135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

Article 1(2) and Article 5g of, and Annex II to, Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (as repealed by Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009)

National legislation cited

Paragraph 6(1).8(i) of the Umsatzsteuergesetz 1994 (Law on Turnover Tax 1994, 'UStG 1994', BGBl. [Federal Law Gazette] No 663/1994, in the versions BGBl. I No 24/2007 and BGBl. I No 112/2012)

Investmentfondsgesetz 1993 (Law on Investment Funds, 'InvFG 1993', BGBl. No 532/1993 as amended by BGBl No 69/2008), in particular Paragraph 40, and the Investmentfondsgesetz 2011 (Law in Investment Funds, 'InvFG 2011', BGBl. I no. 77/2011), in particular Paragraphs 2(1).1, 3(2).1 and 2, 5(1) and (2).1, 28, 30(4), 42 and 186

Court of Justice case-law cited

Judgment of 4 May 2006, C-169/04, *Abbey National plc*; judgment of 7 March 2013, C-275/11, *GfBk Gesellschaft für Börsenkommunikation mbH*; judgment of 13 March 2014, C-464/12, *ATP PensionService A/S*; judgment of 9 December 2015, C-595/13, *Fiscale Eenheid X NV cs*; judgment of 5 June 1997, C-2/95, *SDC*; judgment of 13 December 2001, C-235/00, *CSC;* judgment of 26 May 2016, C-607/14, *Bookit Ltd*; judgment of 25 July 2018, C-5/17, *DPAS Ltd*; judgment of 3 October 2019, C-42/18, *Cardpoint GmbH*; judgment of 28 July 2011, C-350/10, *Nordea;* judgment of 6 October 1982, 283/81, *CILFIT*

Brief summary of the facts and procedure

1 Between 2008 and 2014, various investment management companies ('IMCs'; according to the terminology of the Investmentfondsgesetz 2011: 'management company') outsourced certain activities for the determination of taxable figures at the level of unit-holders to K, the appellant. K invoiced for the activities — which it provided in accordance with specific rules on income tax and investment funds and which ultimately did not relate to the principal activity of the management of the portfolio but to the lawful taxation of the unit-holder's income from the fund — without VAT given that, in the opinion of K, those activities came within the tax exemption for the management of special investment funds provided for in

Paragraph 6(1).8(i) of the UStG 1994 (Article 135(1)(g) of Directive 2006/112/EC). In the tax authorities' view, the exemption does not apply given that the activities are neither specific to nor essential for the exempt management activities and that they did not form a distinct whole, as required by the Court of Justice.

2 An IMC is obliged to provide to unit-holders all the information required for them to comply with their disclosure and evidential obligations under tax law. In particular, the IMC was also under a statutory obligation to declare the taxable figures for the taxation of the unit-holders' income, for which the IMC was liable. To that end, the IMC was required to carry out various tax calculations. The statutory provisions regarding such operations are ultimately designed to ensure the correct taxation of income from funds in the hands of unit-holders.

3 K had been instructed by several IMCs to draw up the tax statement and the standardised declaration. The depositary bank to which the fund accounting was outsourced provided the relevant figures from the fund's accounts to K. Formally, however, the IMC maintained the position of tax representative which transmitted the declaration to the reporting office. The IMC instructing K adopted the tax statements and/or declaration of the relevant tax figures drawn up by K without any changes and transmitted the data to the reporting office.

4 In addition to the comprehensive management tasks performed by the IMC instructing K, they have also outsourced various management tasks to different third parties. One of those outsourced activities entrusted to K involves drawing up the tax statement and drafting the declaration of the relevant tax data in accordance with the process described above on the basis of the data provided by the IMC.

5 Given the complexity of the tax-related aspects of the taxation of investment fund income and the liabilities enshrined in law, this task was often outsourced to third-party service providers. Such outsourcing, which is expressly permitted by law, does not affect the IMC's liability, however; the latter remains strictly liable in relation to third parties for the conduct of the sub-contractor. *Inter partes*, K was liable to the IMC in accordance with the general rules of civil law in the event of loss suffered due to an inaccurate declaration of the taxable figures. K was not liable for the IMC's tax-related investment decisions. Nor did the activity outsourced to K include the determination of the values of the investment fund units.

6 K brought an action before the referring court, the Bundesfinanzgericht (Federal Finance Court, Austria), objecting to the income tax demands issued by the tax office for 2008 to 2014, by which K was ordered to pay VAT for these services.

Principal arguments of the parties in the main proceedings

7 According to the **tax authorities**, it is apparent from the relevant judgments of the Court of Justice on the exempt management of a special investment fund that the activities listed in Annex II to the UCITS Directive might be exempt in any event if they were provided by the IMC itself. In that case those activities would be fund-typical in any event. If, however, these activities were provided by a third-party manager, it was necessary to examine whether they were specific to, and essential for, the management of a special investment fund and, viewed broadly, formed a distinct whole. According to the judgment of the Court of Justice in *GfBk* this requires that the outsourced management activity is intrinsically connected to the management of fund assets *stricto sensu* (portfolio management). According to that judgment, the specific activity of an IMC consists in the collective investment in transferable securities of capital raised from the public. The determination of the taxable figures in order to meet the tax obligations of the unit-holders is not in itself characteristic of the management of a special investment fund. Rather, those services are typical for the services provided by chartered accountants and comparable professions.

8 The determination of the taxable figures to be used in the tax statement and the declaration to be transmitted to the reporting office constitute merely a preliminary activity in order to comply with the tax-reporting obligation to be discharged by the IMC's tax representative. Such activities are not specific to the management of special investment funds, nor do they constitute an essential part of the activities listed in Annex II to the UCITS Directive. Furthermore, the provision of preliminary services to enable the declaration of the taxable figures by another person does not, viewed broadly, form a distinct whole. They would only form a distinct whole if essential central administrative activities, such as those listed in Annex II, were to be transferred and those activities, taken as a whole, formed a distinct whole and were specific to and essential for the management of a special investment fund. The mere reference to an activity listed in Annex II to the UCITS Directive is not sufficient in itself. The low fee paid for K's services is another argument in favour of the existence of merely ancillary services.

9 By contrast, according to **K**, paragraph 22 of *GfBk* and paragraph 77 of *Fiscale Eenheid* show that, in addition to central portfolio management, functions specific to the management of a special investment fund include the associated administrative activities (in particular those listed in Annex II to the UCITS Directive). By no means is it necessary to outsource a distinct whole of administrative activities. On the contrary, individual activities could also be outsourced whilst qualifying for the exemption provided that they are intrinsically connected to the IMC's own typical activity. Given that, according to the case-law of the Court of Justice, the activities listed in Annex II are specific to the management of special investment funds, services intrinsically connected to such activities must also be capable of being exempted.

10 If an activity which the IMC would otherwise have to carry out itself as a result of existing legislation were to be outsourced, this would constitute an intrinsic connection to an activity specific to the management of special investment funds. The activities of determining the relevant taxable figures for purposes of taxing unit-holders, as carried out in the case at hand, exist only in the field of investment funds, which means that, in any event, they constitute an activity that is specific to and essential for funds. Activities such as those for the control and supervision of the activity of an IMC, which must strictly be outsourced to a depositary (depositary bank), are not permitted to be provided by an IMC itself and cannot therefore be specific to its activity. That is why, in *Abbey National*, the Court of Justice rejected the applicability of the exemption provided for in Article 135(1)(g) of Directive 2006/112/EC in respect of such activities.

11 In response to the general argument of the tax authorities that the determination and declaration of the taxable figures by a tax representative are services typically provided by chartered accountants in their professional capacity, K argued first that there are many IMCs which carry out the functions of the tax representative under their own responsibility. Second, there are several credit institutions which act as tax representatives for investment funds that do not manage themselves.

12 Furthermore, as regards the criterion of 'viewed broadly, form a distinct whole' it is not necessary to outsource almost all of the management activity; it is sufficient for the outsourced activity to constitute a distinguishable management activity. This criterion is met in any event given the preparation of the tax treatment of each unit and the determination of the taxable figures to be declared. Even though figures from the earnings statement and/or fund accounts are used in that process, the fact remains that those figures frequently need to be adapted to the taxation of earnings using specific expertise. It follows from *GfBk* that the formal declaration sent to the reporting office by the IMC does not alter this finding given that, in *GfBk*, the IMC had also reserved the right to make the final decision.

13 In order for the management activity to be essential, it is sufficient for the activity to be significant and typical for the proper management of the collective holdings and for it to have a certain importance in that regard. The exemption would, ultimately, apply to an outsourced activity where that activity replaces a management activity intrinsically connected to an activity which is generally carried out by the IMC, and if the service provided constitutes a distinguishable and not merely an ancillary management activity.

14 Given that, under the provisions of the InvFG, the IMC is obliged to provide the unit-holder with all the information necessary to discharge his tax obligations and that, to that end, the IMC must also draw up the tax statement and the declaration of the taxable figures and ensure that they are published, this constitutes an activity typical and specific to the management of a special investment fund. This is also borne out by the fact that Annex II to the UCITS Directive lists the drawing up of tax returns as an administrative activity. The term 'tax declarations' does not only cover the drawing up of formal tax returns, but also any activity to discharge

tax-related obligations. The level of fees paid for the activities outsourced to K, which the tax authorities considered to be low, was arrived at due to various synergies with other service relationships between K and the outsourcing IMC.

Summary of the reasons for the request for a preliminary ruling

15 The Court of Justice has on several occasions examined the interpretation of the exemption provided for in Article 135(1)(g) of Directive 2006/112/EC for the management of special investment funds as defined by Member States and has held that management activities transferred to a third-party manager may also be covered by the exemption where those activities fulfil the specific, essential functions of the management of special investment funds and, viewed broadly, form a distinct whole (see the judgments cited above). However, in view of the divergent interpretation of those criteria by the parties in the context of the pending administrative proceedings and the conflicting objectives — on the one hand, the scope of application is intended to be broad so as to ensure that small investors are able to spread widely their capital in transferable securities through the intermediary of investment funds whilst being exempt from VAT and, on the other hand, the terms used to define the aforementioned tax exemption must be interpreted narrowly since they constitute an exception — the referring court considers that justified doubts remain as to how the term 'management of special investment funds' is to be interpreted in a manner consonant with EU law. The questions at issue arise in particular because the outsourced activities are not intrinsically connected to the principal activity of portfolio management, which consists of the direct collective investment of capital raised from the public. The present case concerns purely administrative activities in the interest of lawful taxation of income received by the unit-holder in accordance with specific provisions under the law on tax and investment funds, which may have a sufficiently intrinsic connection to the administrative activities listed in Annex II to the UCITS Directive for the exemption to apply. In addition, the question arises as to whether the service element covered by K constitutes a distinct whole, as required.

16 The objective of the exemption clause, which must be taken into account for the purposes of interpretation, is to facilitate investment in securities for small investors by means of investment undertakings. It is intended to ensure that the common system of VAT is fiscally neutral as regards the choice between direct investment in securities and investment through undertakings for collective investment (Court of Justice, *Abbey National*, paragraph 62). Activities specific to and typical of the management of special investment funds must therefore be capable of being outsourced without incurring VAT in order to avoid accidental increases in costs. Thus, in *GfBk* (paragraph 31), the Court of Justice also held that an undertaking which provides the exempt activity connected to the management through its own staff must not be given an advantage over an undertaking that outsources such activities. Questions are, however, raised by the fact that, according to the case-law of the Court of Justice, exemption provisions, which

constitute exceptions, must generally be interpreted narrowly and that, therefore, any criteria set by the Court which might restrict the exemption (specificity, essential character and distinctiveness of the activity) might run counter to the objective of the exemption which needs to be taken into account.

17 The aforementioned judgments of the Court of Justice in *SDC*, *CSC*, *Bookit*, *DPAS* and *Cardpoint* concerned exempt financial services, such as transactions concerning payments and transfers or transactions in specific securities, referred to specifically in the VAT Directive. By contrast, in the present case the applicability of the exemption for the transaction 'management of special investment funds as defined by Member States', which is significantly broader, is in dispute. In that regard, the Court of Justice states for instance (see paragraph 66 of *SDC*) that a service specific to a transaction concerning transfers must have the effect of transferring funds and entail changes in the legal and financial situation. The Court's statements as to the specific nature of the actual financial services cannot therefore unreservedly be applied to the wider 'management of special investment funds', in the sense that a service can be specific only if it has a direct impact on the financial situation of the fund (portfolio management *stricto sensu*). It is clear from *Fiscale Eenheid* (paragraphs 72, 73 and 77) that, in addition to portfolio management functions, the administrative functions of undertakings for collective investments (UCITS), as listed in Annex II to the UCITS Directive (which are not exhaustive), are specific functions. By the Court expressly not accepting, in *Abbey National*, the argument of the Commission and the United Kingdom that a restrictive interpretation of the concept of 'management of special investment funds' was required, the management of a special investment fund is not, in principle, limited to portfolio management *stricto sensu*. The Court's statements in that regard concerning the specific nature of the exempt financial services specifically listed cannot therefore be applied to the management of special investment funds. The exemption is not limited to the 'collective investment of capital raised from the public' but generally to the 'management of a special investment fund'. As regards general statements relating to the tax exemption of an outsourced service, however, the referring court considers that it is possible to have recourse to the judgments cited above. The question remains as to whether, in the interest of the correct taxation of the unit-holder, the determination of taxable income of an investor and an investment fund is specific and essential for the management of a special investment fund and whether that activity forms a discrete whole.

Assessment in the light of the purpose

18 The *Abbey National* case concerned, on the one hand, services provided by a depositary to ensure compliance with the law and the fund provisions and, on the other hand, various administrative and accounting activities provided by a third-party manager (on the latter point, see the assessment of the intrinsic connection below).

19 As regards the services provided to ensure compliance with the law and the fund provisions, the Court of Justice held that these were not specific to the management of a special investment fund. The Court justified that conclusion by stating that the purpose of the activities at issue was not to form and manage portfolios with funds paid in by investors when purchasing units. Instead, the purpose of those services was to ensure that undertakings for collective investment were managed in accordance with the law. Thus, those functions do not form part of the management of undertakings for collective investment but belong to the control and supervision of their activities.

20 In the view of the referring court, the Court of Justice does not focus on the question whether the activity was outsourced by law or by contract, but looks solely at the purpose of the activity. While, in the interests of investor protection, the supervisory activities of a depositary bank seek to ensure that funds are managed in compliance with the law, the specific activity of an IMC is aimed at facilitating collective investment in securities for small investors and managing the portfolios formed. The exemption of that activity is aimed at ensuring that the fees paid by investors do not incur VAT, as is the case for direct acquisitions and management of securities.

21 In *Fiscale Eenheid* (paragraph 77 and 78) the Court of Justice also focusses on the purpose. Applied to the present case, this could have the following consequence: management and accounting activities the purpose of which is to ensure that the income of unit-holders is taxed in accordance with the law are not specific to the activity of a fund but occur in the context of various ways of earning income subject to different statutory requirements. At most, it could be taken into account that, in the present case, there are very specific provisions for the taxation of fund income under the law on investment funds.

22 If the Court of Justice were to take the view that, due to its non-specific purpose, the supervision of compliance with legal provisions of the management of a special investment fund is not specific to the management of a special investment fund, the same could hold true of activities which, according to their legal bases, are aimed at ensuring that unit-holders are taxed in accordance with the law. The question therefore arises as to whether an activity which seeks to ensure taxation of the income of unit-holders in accordance with the law is specific to the management of a special investment fund.

Assessment of the intrinsic connection

23 The *Abbey National* judgment also concerned various management and accounting services provided by a third-party manager. The United Kingdom Government and the Commission argued in favour of a narrow interpretation of the provision to the effect that only management activities intrinsically connected to portfolio management, and therefore having a direct impact on the existence of the assets and liabilities of the fund, could be exempted (narrow interpretation of the concept of management activity).

24 The Court of Justice did not agree with this view: the administrative activities referred to in Annex II to the UCITS Directive may, in addition to straight portfolio management, also be exempt given that they are specific to the activities of a UCITS (*Abbey National*, paragraph 64). This is because that activity consists of the collective investment in transferable securities of capital raised from the public. However, according to the referring court, it must be inferred from the caveat added by the Court of Justice in paragraph 70 that the activities referred to in Annex II to the UCITS Directive are in any event specific to the management of a special investment fund and also exempt if they are carried out by the KAG itself. However, according to paragraph 70, those activities, when performed by a third-party manager, can be classified as an exempt activity only if, viewed broadly, they form a distinct whole that is specific to, and essential for, the management of a special investment fund (see, to that effect, *GfBk*, paragraph 21). It is for the national court to decide whether that condition is satisfied (paragraph 73). The Court of Justice does not rule this out but does not answer in the affirmative either, with the result that the judgment in *Abbey National* leaves open the question whether the significant management activities provided in that case are specific to the management of special investment funds.

25 Further conclusions might be drawn from *GfBk*. In paragraph 23 of its judgment, the Court of Justice held that an activity is exempt where it is intrinsically connected to the activity characteristic of an IMC so that it has the effect of performing the specific and essential functions of management of a special investment fund. If, following those arguments, one might still consider that the determination of the income of holders of a unit in a fund constitutes an activity that is innate and typical of an investment fund, this may have to be limited in accordance with the following paragraph 24. In paragraph 24, the Court of Justice stated that activities consisting in giving recommendations to an IMC to purchase and sell assets are intrinsically connected to the activity characteristic of the IMC, which consists in the collective investment in transferable securities of capital raised from the public.

26 The Court does not again refer to the administrative activities as listed in Annex II to the UCITS Directive, which are also mentioned in paragraph 22 as being specific. This may be because *GfBk* concerned advisory services with an intrinsic connection to portfolio management *stricto sensu*, and the Court of Justice therefore only referred to that. However, the fact remains that, in particular the Advocate General's observations, to which the Court of Justice expressly refers, tend to indicate that, in principle, only straight portfolio management and administrative activities that have an intrinsic connection to it and which distinguishes them from other economic activities would be specific. Thus, not every administrative activity referred to in Annex II to the UCITS Directive would be inherently specific but, in the event of outsourcing to a third-party manager, the latter must also be intrinsically connected to portfolio management *stricto sensu* (modified narrow approach).

27 This modified narrow approach would also be consistent with the repeated observations of the Court according to which, in any event, the activities listed in Annex II to the UCITS Directive are specific to the management of IMCs if they exercise them themselves. If, however, they are provided by a third-party manager they must, viewed broadly, form a distinct whole and be specific to, and essential for, the management of special investment funds in order to come within the exemption.

28 It might be inferred from the Court's decision, according to which it is necessary to examine the extent of liability and the purpose of the activity in question in order to establish the specific nature of an outsourced activity listed in Annex II to the UCITS Directive, that the circular reasoning — i.e. that the activities listed in Annex II to the UCITS Directive are specific to the management of special investment funds even in cases of outsourcing, and that those activities therefore serve a specific purpose and also involve liability for a specific activity — is impermissible. To accept that circular reasoning would render pointless the guidance provided by the Court that, in the event that such activities are outsourced to a third party, the exemption applies only if it is specific, essential and forms a distinct whole. The question whether an activity listed in Annex II to the UCITS Directive is specific to the management of special investment funds if it is carried out by a third-party manager therefore depends on different criteria. According to the Court of Justice in *GfBk*, such a criterion is likely to be the existence of an intrinsic connection to the principal activity of portfolio management.

29 This approach may, however, be at odds with the aforementioned broad approach. An argument against the narrow approach, according to which an activity is specific to the management of special investment funds only if it concerns the principal activity of an IMC and thus has an impact on the financial situation of the fund, are the foregoing remarks, according to which the Court of Justice did not accept the argument of the Commission and the United Kingdom as well as the robust rejection of this argument (*ATP PensionService*, paragraph 69). This leaves the modified narrow approach, according to which an administrative activity referred to in Annex II to the UCITS Directive is specific if, although it does not impact on the financial situation of the fund, it has an intrinsic connection to the portfolio management which determines the fund's financial situation. If the latter approach, which may have been expressed in *GfBk*, were correct, the activities at issue in the present case cannot be exempted given the absence of an intrinsic connection to the IMC's principal activity.

Question of liability

30 Regarding the relevance of liability, in paragraph 40 (second and third sentences) of *Bookit* and paragraph 36 of *DPAS* the Court of Justice states: in that regard, a service exempted under the VAT Directive must be distinguished from the supply of a mere physical or technical service. To that end, it is relevant to examine, in particular, the extent of the liability of the supplier of services, in particular the

question whether that liability is restricted to technical aspects or whether it extends to the specific, essential aspects of the transactions which are characteristic of such transactions.

31 If the determination of the relevant figures for the purpose of ensuring the taxation of unit-holders in accordance with provisions under the law on investment funds is specific and essential for the management of a special investment fund, K is also liable for those specific and essential functions.

32 In the event of negative consequences for the unit-holder in the event that the figures in question are calculated incorrectly, the IMC would initially be liable for any damage suffered by the unit-holder. The IMC could, in turn, have recourse against K in accordance with the general principles of civil law. That does not, however, answer the question whether that liability extends to the specific, essential functions of those transactions which are characteristic for the transactions of an IMC. If only activities of portfolio management stricto *sensu* or only management activities with an intrinsic connection to straight portfolio management *stricto sensu* are specific, K would not be liable in relation to the activity to be assessed in this case.

Regarding the required distinctiveness

33 According to paragraphs 27 and 28 of *GfBk*, it is irrelevant whether an outsourced management activity that is intrinsically connected to portfolio management only forms the basis for the final decision of the IMC. The Court of Justice also reiterated the statement that the management of special investment funds may be divided into various activities, which may then benefit from the exemption. Where such activities are transferred to a third-party manager this applies provided that each of those services fulfils the specific, essential functions of the management of special investment funds by investment management companies.

34 Consequently, K also considers that the required distinctiveness did not mean that the services had to form a whole package, but that it was sufficient that the outsourced management activity was sufficiently distinguishable. According to K this was the case since, as part of the overall determination of income, K performs the distinguishable activities of adjusting the figures received from the depositary bank in accordance with requirements under tax law. Furthermore, according to K the failure to mention the criterion of distinctiveness in *GfBk* meant that the Court may have abandoned that criterion or, at the very least, no longer attached the same significance to it as in earlier judgments.

35 According to the referring court, it is very clear from the general remarks made in the Court's judgments on the outsourcing of financial services which were handed down after *GfBk* (*Bookit*, *DPAS*, *Fiscale Eenheid*, *Cardpoint*) that the Court of Justice continues to rely on the 'viewed broadly, form a distinct whole' criterion for purposes of applying the exemption to an outsourced financial service. According to paragraphs 38 to 41 of *Bookit*, paragraph 34 of *GfBk* and

paragraph 71 of *Fiscale Eenheid*, the functional aspects of the activity are decisive. In order to be classified as a transaction for the management of a special investment fund a service must, viewed broadly, form a distinct whole which fulfils the specific, essential functions of the management of a special investment fund.

36 However, the referring court is unclear on how far the distinctiveness of an outsourced management activity has to go or how extensive it has to be in order for it, 'viewed broadly, [to] form a distinct whole'. The question that arises is therefore whether the service element provided by K and described in the summary of the facts, namely 'taking on the tax-related responsibilities to ensure that the policy-holders are taxed' by adapting the figures received from the depositary bank and/or the IMC, as described above, satisfies the requirement of the existence of a distinct whole when viewed broadly, as stipulated by the Court of Justice.

37 An answer to the questions regarding the interpretation of Article 135(1)(g) of Directive 2006/112/EC, in particular the scope of the term 'management of a special investment fund', is relevant to the resolution of the pending dispute as regards the question of whether the outsourced determination of the taxable figures is treated as exempt from tax or as taxable. The Bundesfinanzgericht (Federal Finance Court) does not take the view that no doubts remain regarding the interpretation of EU law in the present case, particularly in view of the facts described above, which have been analysed above and which deviate from previous decided cases. Furthermore, in the interests of neutral competition within the European Union, there is an interest in the speedy clarification of the interpretation of the relevant provision of Directive 2006/112/EC.