

Order of the Court (Third Chamber) of 27 November 2008 – Vollkommer v Finanzamt Hannover-Land I

(Case C-156/08)

Article 104(3) of the Rules of Procedure – Sixth VAT Directive – Article 33(1) – Meaning of ‘turnover taxes’ – Real property transfer tax

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Prohibition on the levying of other domestic taxes which can be characterised as turnover taxes (Council Directive 77/388, Art. 33) (see paras 32-35, operative part)

Re:

Reference for a preliminary ruling – Niedersächsisches Finanzgericht – Interpretation of Article 33(1) of Directive 77/388/EEC: Sixth Council Directive 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) and of Article 401 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) – Account taken, for the purposes of determining the basis of assessment of real property transfer tax (‘Grunderwerbsteuer’), of future building work subject to turnover tax if the purchase includes both the supply of the building plot and the building work.

Operative part

Article 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, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as not precluding a Member State, on the transfer of a plot of land not yet built on, from including future building work in the taxable amount used for the assessment of taxes on transfers and transactions – such as the ‘Grunderwerbsteuer’ provided for under German law – and thereby making a transaction that is subject to value added tax under that directive subject also to those other taxes, provided that the latter cannot be characterised as turnover taxes.