Provisional text

JUDGMENT OF THE COURT (First Chamber)

4 September 2019 (*)

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Sale of land on which a building is located at the time of supply — Classification — Articles 12 and 135 — Concept of ‘building land’ — Concept of ‘building’ — Assessment of the economic and commercial reality — Evaluation of objective evidence — Intention of the parties)

In Case C?71/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vestre Landsret (High Court of Western Denmark), made by decision of 24 January 2018, received at the Court on 2 February 2018, in the proceedings

Skatteministeriet

v

KPC Herning,

THE COURT (First Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, C. Toader, A. Rosas, L. Bay Larsen and M. Safjan, Judges,

Advocate General: M. Bobek,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 30 January 2019,

after considering the observations submitted on behalf of:

– KPC Herning, by K. Bastian and T. Frøbert, advokater,

– the Danish Government, by J. Nymann-Lindegren and M. Wolff, acting as Agents, and by S. Horsbøl Jensen, advokat,

– the European Commission, by R. Lyal and N. Gossement, acting as Agents, and by H. Peytz, advokat,

after hearing the Opinion of the Advocate General at the sitting on 19 March 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 12 and 135 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

(OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between the Skatteministeriet (Ministry of Taxation, Denmark) and KPC Herning A/S, a company governed by Danish law, concerning the value added tax (VAT) payable on the supply of immovable property.

Legal context

EU law

3 Article 1(2) of Directive 2006/112 provides:

‘2. The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.

…’

4 Article 12 of that directive provides:

‘1. Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in the second subparagraph of Article 9(1) and in particular one of the following transactions:

(a) the supply, before first occupation, of a building or parts of a building and of the land on which the building stands;

(b) the supply of building land.

2. For the purposes of paragraph 1(a), “building” shall mean any structure fixed to or in the ground.

Member States may lay down the detailed rules for applying the criterion referred to in paragraph 1(a) to conversions of buildings and may determine what is meant by “the land on which a building stands”.

…

3. For the purposes of paragraph 1(b), “building land” shall mean any unimproved or improved land defined as such by the Member States.’

5 Article 135 of Directive 2006/112 provides:

‘1. Member States shall exempt the following transactions:

…

(j) the supply of a building or parts thereof, and of the land on which it stands, other than the supply referred to in point (a) of Article 12(1);

(k) the supply of land which has not been built on other than the supply of building land as referred to in point (b) of Article 12(1);

…’

Danish law

6 The Lovbekendtgørelse om merværdiafgift (Consolidated Law on value added tax), as amended by Law No 520 of 12 June 2009, codified under No 760 on 21 June 2016 (‘the Law on VAT’), provides in Paragraph 13(1)(9):

‘1. The following goods and services are exempt from tax:

…

(9) the supply of immovable property. However, the following are excluded from the exemption:

(a) the supply of a new building or of a new building and the land on which the building stands;

(b) the supply of building land, whether developed or not, and in particular the supply of built-on land.’

7 Paragraph 13(3) is worded as follows:

‘The Minister for Taxation may establish detailed rules relating to the definition of immovable property within the meaning of subparagraph 1, point 9.’

8 By Bekendtgørelse nr. 1370 om ændring af bekendtgørelse om merværdiafgiftsloven (Regulation No 1370 amending the regulation on the Law on value added tax) of 2 December 2010, the Minister for Taxation exercised the power conferred by Paragraph 13(3) of the Law on VAT to define the transactions subject to VAT. The provisions of that regulation, in the version applicable to the facts at issue in the main proceedings, are repeated in the Bekendtgørelse nr. 808 om merværdiafgift (Regulation No 808 on value added tax) of 30 June 2015 (‘the VAT regulation’). Paragraph 54(1) of that regulation provides as follows:

‘The concept of building referred to in Paragraph 13(1)(9)(a) of the Law on VAT shall mean buildings which are incorporated into the land which are completed for the purpose for which they are intended. The supply of parts of such a building shall also be deemed to be a supply of a building.’

9 Paragraph 56(1) of the VAT regulation is worded as follows:

‘The concept of “building land” referred to in Paragraph 13(1)(9)(b) of the Law on VAT shall mean undeveloped land which is designated, pursuant to the Law on land planning or provisions adopted pursuant thereto, for purposes which enable the construction of buildings within the meaning of Paragraph 54 of this regulation.’

10 Section 2.2 of the Skatteministeriets vejledning om moms på salg af nye bygninger og byggegrunde (Guidelines of the Ministry of Taxation on VAT on the sale of new buildings and building land) states:

‘The supply of buildings and the land on which the buildings stand is not subject to VAT where they are not new buildings.

If the supply is made for the purpose of the construction of a new building, however, the supply shall be considered to be a supply of building land.

…

If it is agreed that the building will be demolished by the seller or if it appears from the contract of sale that the buildings are acquired for demolition by the buyer, it is a sale of building land.

In other cases, the buyer's intention cannot be decisive in assessing whether there is a supply of building land.

The criteria that may be taken into account, on an individual or combined basis, to determine whether building land is being supplied may be, for example, the price fixed in the contract of sale in comparison with the normal value of similar goods, the nature of the construction ("restoration"), a lack of connection to public/commercial services, the previous use of the property and the nature of the construction (e.g. a "barn" for storage which does not meet very basic conditions for future use).

If it is concluded that the supply was made for purpose of the construction of a new building, the supply shall be considered to be a supply of building land.

…'

The dispute in the main proceedings and the question referred for a preliminary ruling

11 KPC Herning is a Danish property development and construction company which develops property projects and carries out construction work under turnkey contracts in Denmark.

12 In May 2013, KPC Herning and Boligforeningen Kristiansdal, a low-rent housing body, decided to design a project for the creation of social housing units for young persons on land belonging to Odense Havn (port of Odense, Denmark), known as 'Finlandkaj 12'. The project was discussed with the City of Odense and the port of Odense.

13 In the autumn of 2013, KPC Herning purchased, from the port of Odense, the land known as 'Finlandkaj 12' with the existing warehouse built on that land. The sale contract was subject to a number of conditions, including the condition that KPC Herning was to conclude a contract with a low-rent housing body for the purpose of carrying out, on the land in question, a building project composed of social housing for young persons.

14 On 5 December 2013, KPC Herning sold the land known as 'Finlandkaj 12', with the warehouse, to Boligforeningen Kristiansdal. The contracts concluded at that time between the parties formed an overall contractual framework, from which it was apparent that the sale was subject to the condition that KPC Herning undertake to build and provide, on a turnkey basis, social housing units for young persons on that land.

15 In particular, it was stipulated that Boligforeningen Kristiansdal was to carry out the partial demolition of the warehouse built on the land known as 'Finlandkaj 12', retaining only the central section of the gable and some parts of its technical installations. In addition, the parties agreed that KPC Herning was required to supply a fully completed building for residential use on that land. Boligforeningen Kristiansdal carried out the partial demolition of the warehouse at its own expense and risk.

16 It is not in dispute that, at the date of the successive transfers of the land and the

warehouse, that warehouse was fully operational.

17 On 10 December 2013, KPC Herning asked the Skatterådet (National Tax Board, Denmark) whether the sale of the land known as ‘Finlandkaj 12’ and the warehouse by the port of Odense and the resale of the same property were exempt from VAT. In its reply of 24 June 2014, that authority replied in the negative.

18 Having received a claim made by KPC Herning, the Landsskatteret (National Tax Tribunal, Denmark) held, by a decision of 9 December 2015, that it was not appropriate to classify the property in question as building land the sale of which would had been subject to VAT, on the ground that, at the time of the two sales, there was a building on that land. In addition, it held that nor was it appropriate, since the demolition had been carried out by Boligforeningen Kristiansdal after the sale between the port of Odense and KPC Herning, to take the view that those two parties made a single transaction including the demolition, as was the case in the action which gave rise to the judgment of 19 November 2009, *Don Bosco Onroerend Goed* (C?461/08, EU:C:2009:722).

19 By application of 9 March 2016, the Ministry of Taxation appealed against the decision of the Landsskatteret (National Tax Tribunal) to the retten i Herning (Regional Court, Herning, Denmark), which referred the case to the Vestre Landsret (High Court of Western Denmark) because of the questions of principle which it raises.

20 Before the referring court, the Ministry of Taxation argued that, in accordance with the judgment of 19 November 2009, *Don Bosco Onroerend Goed* (C?461/08, EU:C:2009:722, paragraph 43), it was for the Member States to define the concept of ‘building land’. That power should be exercised within the limits resulting from the exemptions provided for in Article 135(1)(j) and (k) of Directive 2006/112 as regards immovable property consisting of a building and the land on which it stands and land which has not been built on and is not intended to support a building.

21 Under Danish law, the concept of ‘building land’ covers land which has not been built on, bearing in mind that the economic reality and, therefore, the issue of whether the immovable property is intended to support a new building are decisive in that regard. That interpretation would not render Article 135(1)(j) of Directive 2006/112 meaningless, since it does not lead to the classification of any supply of an existing building and the land on which that building stands as a supply of building land. Furthermore, it is consistent with the judgment of 20 February 1997, *DFDS* (C?260/95, EU:C:1997:77, paragraph 23), in accordance with which consideration of the economic reality is a fundamental criterion for the application of the common system of VAT.

22 Consequently, the transactions carried out by the port of Odense and KPC Herning should be classified as supplies of building land. The fact that the building used as a warehouse which was on the land was not wholly demolished has no bearing on that classification, since the undemolished part of the building cannot be classified as a ‘building’ within the meaning of Article 12(2) of Directive 2006/112.

23 KPC Herning, on the other hand, claimed that land supporting a building cannot be classified as building land, unless the specific conditions of the judgment of 19 November 2009, *Don Bosco Onroerend Goed* (C?461/08, EU:C:2009:722), are satisfied, which is not the case here. In the case which gave rise to that judgment, the vendor was responsible for the demolition of an existing building in order to supply bare land as part of a composite service.

24 KPC Herning also claimed that it was necessary to distinguish the supply of the buildings from the supply of immovable property not yet built on within the meaning of Article 12(2) and Article 135(1)(k) of Directive 2006/112 respectively. The terms used in those provisions should be

given an independent interpretation which does not deprive them of their effects, as confirmed by the case-law of the Court (judgments of 8 June 2000, *Breitsohl*, C?400/98, EU:C:2000:304, paragraph 48; of 11 June 2009, *RLRE Tellmer Property*, C?572/07, EU:C:2009:365, paragraph 15; and of 17 January 2013, *Woningstichting Maasdriel*, C?543/11, EU:C:2013:20, paragraph 25).

25 In accordance with Article 12(3) read in conjunction with Article 135(1)(j) and (k) of Directive 2006/112, building land constitutes a subcategory of land which has not been built on. Thus, Directive 2006/112 leaves to the Member States alone the decision of whether and under what conditions immovable property which has not been built on may be classified as 'building land'.

26 Moreover, for the purposes of assessing a transaction in the light of Directive 2006/112, it is for the national authorities, in accordance with the case-law of the Court, to take account of the objective nature of the transaction and not the subjective intention of the parties (judgment of 27 September 2007, *Teleos and Others*, C?409/04, EU:C:2007:548, paragraph 39).

27 In the present case, it follows from those principles that the two sales transactions at issue should be classified as supplies of land occupied by an old building.

28 In those circumstances, the Vestre Landsret (High Court of Western Denmark) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is it compatible with Article 135(1)(j), and Article 12(1)(a) and (2), on the one hand, and with Article 135(1)(k), and Article 12(1)(b) and (3), on the other, of [Directive 2006/112] for a Member State, in circumstances such as those in the main proceedings, to consider a supply of land on which, at the time of supply, there is a building as a sale of building land subject to [VAT], when it is the parties' intention that the building is to be wholly or partly demolished in order to make room for a new building?'

Consideration of the question referred

29 By its question, the referring court asks, in essence, whether Article 12(1)(a) and (b), (2) and (3) and Article 135(1)(j) and (k) of Directive 2006/112 must be interpreted as meaning that a supply of land supporting a building at the date of that supply may be classified as a supply of 'building land' where the parties' intention was that the building should be wholly or partly demolished to make room for a new building.

30 The referring court thus seeks to determine the VAT regime applicable to the two sales transactions at issue in the main proceedings made by, on the one hand, the port of Odense and KPC Herning and, on the other, KPC Herning and Boligforeningen Kristiansdal. Those transactions both concerned the same property, consisting of land and a building used as a warehouse, which was on that land.

31 As is apparent from the order for reference, it is not in dispute that the building used as a warehouse had been operated by the port of Odense before the sales transactions at issue and that it was fully operational at the date of its supply to KPC Herning and, subsequently, to Boligforeningen Kristiansdal. Nor is it in dispute that the various contracts concluded in that context made those sales transactions subject to the condition that KPC Herning carry out a construction project on the land in question relating to the construction of social housing.

32 At the hearing before the Court, KPC Herning, the Danish Government and the European Commission were of the view that it was necessary, in order to classify the two successive sales transactions and, therefore, to determine the VAT regime under which they fall, to assess them

independently of each other. They disagree, however, as to the interpretation to be given to Directive 2006/112 and offer three different classifications for those transactions. While, in the view of KPC Herning, each of the transactions should be classified as a ‘supply of a former building’ within the meaning of Article 135(1)(j) of that directive, the Danish Government considers that they should be classified as a ‘supply of building land’, within the meaning of Article 12(1)(b) of that directive. The Commission, for its part, distinguishes between the two transactions at issue and is of the view that the first transaction relates to the supply of a former building. The second transaction, however, is not merely a simple sale, but includes the construction of new buildings. It must therefore be classified as a ‘supply of a building and the land on which it stands’, before its first occupation, within the meaning of Article 12(1)(a) of the directive.

33 Those differences of interpretation arise from the disagreement of KPC Herning, the Danish Government and the Commission on the importance to be attached to contractual terms and the intention of the parties that may be inferred from them in the classification of a transaction for VAT purposes, in a situation where projects and works linked by contract to the sale of property have still not been carried out at the time of the supply of that property. In the present case, it is therefore necessary to determine whether and to what extent it is appropriate to take account of the intention to demolish part of the existing building used as a warehouse constructed on the land known as ‘Finlandkaj 12’ and to replace it with a new building.

34 Thus, the question arises first as to the circumstances in which a number of successive supplies, such as the sale of a building with the land on which it has been built, the demolition of that building then the construction of a new building, must be classified, for VAT purposes, as transactions which are independent of each other or as a single transaction composed of several indivisibly linked services.

35 In that regard, it is clear from the Court’s case-law that, where a transaction comprises a bundle of elements and acts, regard must be had to all the circumstances in which the transaction in question takes place in order to determine whether that operation gives rise, for the purposes of VAT, to two or more distinct supplies or to one single supply (judgment of 18 October 2018, *Volkswagen Financial Services (UK)*, C?153/17, EU:C:2018:845, paragraph 29).

36 The Court has also held, first, that it follows from the second subparagraph of Article 1(2) of Directive 2006/112 that every transaction must normally be regarded as distinct and independent and, second, that a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system (judgment of 18 October 2018, *Volkswagen Financial Services (UK)*, C?153/17, EU:C:2018:845, paragraph 30).

37 Accordingly, in certain circumstances, several formally distinct services, which could be supplied separately and thus give rise, separately, to taxation or exemption, must be considered to be a single transaction when they are not independent (judgment of 19 December 2018, *Mailat*, C?17/18, EU:C:2018:1038, paragraph 32).

38 A supply must be regarded as a single supply where two or more elements or acts supplied by the taxable person are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (judgment of 28 February 2019, *Sequeira Mesquita*, C?278/18, EU:C:2019:160, paragraph 30). That is also the case where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a supply must be regarded as ancillary to a principal supply if it does not constitute, for customers, an end in itself but a means of better enjoying the principal service supplied (judgment of 19 December 2018, *Mailat*, C?17/18, EU:C:2018:1038, paragraph 34).

39 In order to determine whether the services supplied constitute independent services or a single service, it is necessary to examine the characteristic elements of the transaction concerned. However, there is no absolute rule for determining the extent of a service for VAT purposes and in order to determine the extent of a service, all the circumstances in which the transaction concerned takes place must, therefore, be taken into account (judgment of 17 January 2013, *BG? Leasing*, C?224/11, EU:C:2013:15, paragraph 32).

40 In the course of an overall assessment of the circumstances of a transaction, the declared intention of the parties concerning the VAT liability of a transaction must be taken into consideration, provided that it is supported by objective evidence (judgment of 12 July 2012, *J.J. Komen en Zonen Beheer Heerhugowaard*, C?326/11, EU:C:2012:461, paragraph 33).

41 As regards the classification of a sale of land with an existing building, the partial or total demolition of which is intended, the Court has already provided, on a number of occasions, indications as to the objective elements which may be relevant in that regard.

42 Thus, in the judgment of 19 November 2009, *Don Bosco Onroerend Goed* (C?461/08, EU:C:2009:722, paragraphs 39, 40 and 44), the Court held, first, that the economic object pursued by the seller and by the purchaser of the immovable property was the supply of land ready for construction. To that end, it noted that the vendor was responsible for the demolition of the existing building on the land in question and that the cost of that demolition had been borne, at least in part, by the purchaser. Similarly, it noted that, at the date of the supply of the immovable property, the demolition of the building had already begun. In the light of those circumstances, the Court classified the supply of the immovable property in question and the demolition of the existing building as a single supply of land which had not been built upon.

43 It is clear from the case-law of the Court that the relevant objective factors to be taken into consideration for the purposes of classifying a given transaction as regards VAT include the state of advancement, at the date of the supply of a property composed of land and a building, of the demolition or transformation works carried out by the vendor, the use of that immovable property on the same date and the undertaking by the vendor to carry out demolition work in order to enable future construction (see, to that effect, judgments of 12 July 2012, *J.J. Komen en Zonen Beheer Heerhugowaard*, C?326/11, EU:C:2012:461, paragraph 34, and of 17 January 2013, *Woningstichting Maasdriel*, C?543/11, EU:C:2013:20, paragraph 33).

44 Moreover, in its judgment of 8 July 1986, *Kerrutt* (73/85, EU:C:1986:295, paragraphs 12 and 15), the Court, hearing the question of whether the supply of building land and the subsequent construction on that land of a new building, as provided for in a framework contract, were to be classified as a single transaction, took account of the fact that, first, the transaction relating to the land and, second, supplies of property and services constituted legally distinct transactions carried out by different contractors. In the light of those factors, it held that, despite the economic links between all the transactions at issue and their common purpose, which consisted of the construction of a building on the land acquired, it was not appropriate, in the circumstances of that case, to classify them as a single transaction.

45 In the case in the main proceedings, with regard to the first sale transaction at issue, under which KPC Herning purchased, from the port of Odense, immovable property composed of land and a building used as a warehouse, it has already been noted in paragraph 31 of this judgment that that warehouse was, at the date of its supply, fully operational. It is apparent from the order for reference that none of the parties to that contract of sale was responsible for the demolition of that warehouse, since that demolition was carried out, moreover, only after the acquisition of the property in question by Boligforeningen Kristiansdal.

46 In those circumstances, it must be held that a transaction such as that first sale is distinct and independent from the subsequent transactions made by KPC Herning and Boligforeningen Kristiansdal and, in particular, from the partial demolition of the warehouse in question.

47 The mere fact that the sale provided for in the contract concluded by the port of Odense and KPC Herning was subject to the condition that KPC Herning conclude a contract with a low-rent housing body, for the purpose of constructing social housing units on the property at issue, cannot bind the various transactions in a way such that they may be regarded as a single, indivisible economic service, which it would be artificial to split.

48 In the second sale transaction at issue in the main proceedings, Boligforeningen Kristiansdal purchased from KPC Herning the land and the warehouse previously sold to KPC Herning by the port of Odense. As is apparent from the file before the Court, at the time of its supply to Boligforeningen Kristiansdal, the warehouse could effectively still be used. Following that supply, the vendor, KPC Herning, was not at all involved in the partial demolition of the warehouse. The purchaser instructed, at its own expense and risk, a third-party undertaking to carry out the necessary works. It thus appears, subject to the verifications to be carried out by the referring court, that the demolition of the warehouse is a transaction independent of its sale and does not form, with that transaction, a single economic service.

49 Indeed, it appears that the sale of the land with the warehouse was subject to the condition that the vendor, while retaining certain existing elements of the old building, construct a new building. However, as is set out in paragraph 47 of this judgment, that fact alone cannot link the various transactions in such a way that they form an indivisible economic service, which it would be artificial to split.

50 Consequently, as was also noted by the Advocate General in points 31 and 32 of his Opinion, sales transactions, such as the two transactions at issue in the main proceedings, cannot be regarded as forming part of a single package and must be assessed separately for VAT purposes.

51 In those circumstances, it is also appropriate to examine whether those transactions can be classified as a ‘supply of building land’, within the meaning of Article 12(1)(b) of Directive 2006/112.

52 In accordance with Article 12(3) of that directive, for the purposes of Article 12(1)(b), ‘building land’ means any unimproved or improved land defined as such by the Member States.

53 The Member States, when defining what land is to be regarded as being ‘building land’, must have regard to the objective pursued by Article 135(1)(k) of Directive 2006/112, which seeks to exempt from VAT only supplies of land which has not been built on and is not intended to support a building (judgment of 17 January 2013, *Woningstichting Maasdriel*, C?543/11, EU:C:2013:20, paragraph 30).

54 As the Advocate General observed in point 59 of his Opinion, Member States’ discretion in

defining what constitutes ‘building land’ is also limited by the scope of the concept of a ‘building’, defined quite broadly in the first subparagraph of Article 12(2) of Directive 2006/112 as ‘any structure fixed to or in the ground’.

55 Moreover, Article 135(1)(j) of Directive 2006/112 provides for an exemption from VAT in favour of the supply of buildings, other than those referred to in Article 12(1)(a) thereof. The latter provision refers, for its part, to the supply of a building or part of a building and the land on which it stands, before its first occupation.

56 Thus, those provisions, read together, make a distinction between old and new buildings, the sale of an old building not being, as a rule, subject to VAT (judgment of 16 November 2017, *Kozuba Premium Selection*, C?308/16, EU:C:2017:869, paragraph 30).

57 The *ratio legis* of those provisions is the relative lack of added value generated by the sale of an old building. Indeed, the sale of a building following its first supply to a final consumer, which marks the end of the production process, does not generate any significant added value and must therefore, as a rule, be exempt (judgment of 16 November 2017, *Kozuba Premium Selection*, C?308/16, EU:C:2017:869, paragraph 31).

58 In the present case, neither the first sale of the immovable property at issue in the main proceedings nor the second appears to have increased the economic value of that property, with the result that those two transactions did not give rise to significant added value such as to make them subject to VAT, in accordance with the case-law cited in the preceding paragraphs of the present judgment.

59 If the sale of a fully operational warehouse, such as that which is the subject of the sales at issue in the main proceedings, could be classified as a supply of building land and not as the supply of an old building and of the land on which it stands, solely on the basis of the parties’ intention in the sale contract, that would undermine the principles of Directive 2006/112 and would be likely to render the exemption provided for in Article 135(1)(j) of that directive meaningless.

60 Such an interpretation would be contrary to that provision. The interpretation of the terms used to describe the exemptions envisaged by Article 135(1) of Directive 2006/112 must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Accordingly, those terms must not be construed in such a way as to deprive the exemptions of their intended effects (see, to that effect, judgment of 16 November 2017, *Kozuba Premium Selection*, C?308/16, EU:C:2017:869, paragraphs 39 and 40).

61 Furthermore, as is apparent from the judgments of 19 November 2009, *Don Bosco Onroerend Goed* (C?461/08, EU:C:2009:722) and of 17 January 2013, *Woningstichting Maasdriel* (C?543/11, EU:C:2013:20), the sale of a property composed of land and a building which is intended to be demolished is considered to form a single transaction for the supply of land which has not been built on and not one of a building and the land on which it stands only where certain objective circumstances are met, such as, inter alia, those set out in paragraphs 42 and 43 of this judgment, which show that the sale is so closely linked to the demolition of the building that it would be artificial to split them.

62 Accordingly, a transaction consisting of the supply of land on which a fully operational building is built, such as, first, the sale of the immovable property at issue in the main proceedings by the port of Odense to KPC Herning and, second, the resale of that property by KPC Herning to Boligforeningen Kristiansdal, which are economically independent and do not constitute a single transaction with other services, cannot be classified, subject to the verifications which are for the

referring court to make, as a sale of building land.

63 It follows from all the foregoing considerations that the answer to the question referred is that Article 12(1)(a) and (b), (2) and (3) and Article 135(1)(j) and (k) of Directive 2006/112 must be interpreted as meaning that a supply of land supporting a building at the date of that supply cannot be classified as a supply of ‘building land’ where that transaction is economically independent of other services and does not form a single transaction with them, even if the parties’ intention was that the building should be wholly or partly demolished to make room for a new building.

Costs

64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 12(1)(a) and (b), (2) and (3) and Article 135(1)(j) and (k) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a supply of land supporting a building at the date of that supply cannot be classified as a supply of ‘building land’ where that transaction is economically independent of other services and does not form a single transaction with them, even if the parties’ intention was that the building should be wholly or partly demolished to make room for a new building.

[Signatures]

* Language of the case: Danish.