

JUDGMENT OF THE COURT (Tenth Chamber)

29 June 2023 (*)

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Article 44 – Place of supply of services – Implementing Regulation (EU) No 282/2011 – Article 11(1) – Provision of services – Point of reference for tax purposes – Concept of ‘fixed establishment’ – Suitable structure in terms of human and technical resources – Ability to receive and use the services for the fixed establishment’s own needs – Provision of tolling services and ancillary services – Exclusive contractual undertaking between a company providing services in a Member State and the company receiving those services established in a third State – Legally independent companies)

In Case C-232/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d’appel de Liège (Court of Appeal, Liège, Belgium), made by decision of 18 March 2022, received at the Court on 1 April 2022, in the proceedings

Cabot Plastics Belgium SA

v

État belge,

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of the Chamber, M. Ilešič and I. Jarukaitis (Rapporteur), Judges,
Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Cabot Plastics Belgium SA, by J. Lejeune and G. Vael, avocats,
- the Belgian Government, by P. Cottin, J.-C. Halleux and C. Pochet, acting as Agents,
- the European Commission, by M. Björkland and C. Ehrbar, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2008/8/EC of 12 February 2008 (OJ 2008 L 44, p. 11) (‘the VAT Directive’), and Article 11 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112 (OJ 2011 L 77, p. 1).

- 2 The request has been made in proceedings between Cabot Plastics Belgium SA ('Cabot Plastics') and the État belge (Belgian State), represented by the ministre des Finances (Minister for Finance), concerning a decision of the tax authority requiring that company to pay additional value added tax (VAT) together with default interest and a fine.

Legal context

European Union law

- 3 Title V of the VAT Directive, on the place of taxable transactions, includes a Chapter 3, entitled 'Place of supply of services'. In Section 2 of that chapter, entitled 'General rules', Article 44 of that directive provides:

'The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services is the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides.'

- 4 Chapter V of Implementing Regulation No 282/2011, entitled 'Place of taxable transactions', contains a Section 1, entitled 'Concepts', which includes Article 11(1), which provides:

'For the application of Article 44 of [the VAT Directive], a "fixed establishment" shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs.'

Belgian law

- 5 Under Article 21(2) of the code de la taxe sur la valeur ajoutée (Value added tax code) of 3 July 1969 (*Moniteur belge* of 17 July 1969, p. 7046), in the version applicable to the facts in the main proceedings:

'The place of supply of services provided to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of services shall be the place where that fixed establishment is located. ...'

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

- 6 Cabot Switzerland GmbH is a company under Swiss law, which has established its place of business in Switzerland. It is identified for VAT purposes in Belgium for its business of selling carbon-based products.

- 7 Cabot Switzerland, as the main operating company of the Cabot group for the 'Europe, Middle East and Africa' region, concluded a tolling contract with a number of companies, including the Belgian commercial company Cabot Plastics. The latter, although part of the same group, is legally independent of Cabot Switzerland. However, they are linked financially since Cabot Plastics is 99.99% owned by Cabot Holding I GmbH, which is itself 100% owned by Cabot Lux Holdings Sàrl, which also holds the entirety of the shares in Cabot Switzerland.

- 8 Pursuant to the tolling agreement concluded on 14 February 2012 ('the agreement of 14 February 2012'), Cabot Plastics uses exclusively its own equipment to process, for the benefit and under the direction of Cabot Switzerland, raw materials into products used in the manufacture of plastics. The services provided by Cabot Plastics to Cabot Switzerland constitute almost all of its turnover.

- 9 In accordance with the agreement of 14 February 2012, Cabot Plastics stores on its premises the raw materials purchased by Cabot Switzerland, and then processes them into products used in the manufacture of plastics. It then stores those products before they are sold by Cabot Switzerland from Belgium to various customers on the Belgian market, on the European market or for export. The collection and transportation of the goods from Cabot Plastics' facilities are carried out either by those customers, or by external hauliers used by Cabot Switzerland.
- 10 Cabot Plastics also provides a series of additional services to Cabot Switzerland, in particular, storage of products, including managing products stored in third-party warehouses, making recommendations aimed at optimising the manufacturing process, carrying out internal and external technical checks and assessments, reporting the results to Cabot Switzerland and making deliveries or providing services needed by other production units. In that respect, Cabot Plastics provides comments regarding the operational requirements of its factories, facilitates customs formalities, complies with Cabot Switzerland's quality control and quality assurance standards and procedures, provides Cabot Switzerland with support for improving the manufacturing processes and the planning of its business, provides it with administrative support in relation to customs and excise duties, acts as official importer on behalf of and at the request of that company and manages packaging equipment. Cabot Plastics carries out those additional activities in accordance with the conditions set out in the agreement.
- 11 Cabot Plastics brought proceedings before the Service des décisions anticipées en matière fiscale (Tax Ruling Commission) (SDA) of the Service public fédéral des Finances (Federal Public Service for Finance, Belgium), which, by decision of 31 January 2012, ruling on corporate tax matters, stated that that company's business did not involve Cabot Switzerland having a fixed establishment in Belgium, for the purposes of Articles 227 to 229 of the Code des impôts sur les revenus (Income Tax Code) and Article 5 of the Convention entre la Confédération suisse et le Royaume de Belgique en vue d'éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune (Convention between the Swiss Confederation and the Kingdom of Belgium for the avoidance of double taxation in respect of taxes on income and capital), concluded on 28 August 1978.
- 12 However, following a tax inspection carried out in 2017, the tax authority came to the view that Cabot Switzerland had a fixed establishment in Belgium for the purposes of the VAT legislation and that, accordingly, the services provided by Cabot Plastics to that company between 2014 and 2016 had to be regarded as taking place in Belgium and subject to VAT in Belgium. A statement of adjustment was sent to Cabot Plastics, which noted its disagreement with that statement.
- 13 By decision of 19 December 2017, the tax authority therefore ordered Cabot Plastics to pay EUR 10 609 844.08 in VAT and EUR 1 060 980 in fines, together with statutory interest as from 21 January 2017.
- 14 On 30 March 2018, Cabot Plastics brought an action against the decision of 19 December 2017 before the tribunal de première instance de Liège (Court of First Instance, Liège, Belgium). By judgment of 14 January 2020, that court upheld that application in part, holding that Cabot Switzerland had a fixed establishment in Belgium, but annulling that decision as regards the order to pay the fine.
- 15 On 11 September 2020, Cabot Plastics brought an appeal against that judgment before the cour d'appel de Liège (Court of Appeal, Liège, Belgium), the referring court. It requests that court to vary that judgment, to find that it is not liable for the VAT imposed on it and to order the Belgian State to reimburse all sums improperly collected or withheld, together with default interest.
- 16 Cabot Plastics submits, before the referring court, that the place of supply of the services which it invoiced to Cabot Switzerland was not Belgium, but Switzerland, where Cabot Switzerland has established its place of business.
- 17 By a cross-appeal lodged on 15 January 2021, the Belgian State claims that the judgment of the tribunal de première instance de Liège (Court of First Instance, Liège) should be varied as regards the fine imposed on Cabot Plastics. In its view, Cabot Switzerland has a fixed establishment in Belgium, within the premises of Cabot Plastics, with the result that the services provided by Cabot Plastics to Cabot Switzerland are located in that Member State.

- 18 First, according to the Belgian State, the technical resources constituting that fixed establishment are the production plants, the distribution centre and the storage areas which belong to Cabot Plastics, but which must be regarded as being made available to Cabot Switzerland under the agreement of 14 February 2012, since that agreement provides that Cabot Plastics' equipment is to be used exclusively for the benefit and under the direction of Cabot Switzerland, so that Cabot Switzerland has free use of that equipment.
- 19 Secondly, as regards the human resources of that fixed establishment, the Belgian State submits that they are made up of the operational staff of Cabot Plastics made available to Cabot Switzerland, which makes it possible for Cabot Switzerland to make sales, in particular, in Belgium. It also notes that such staff provides, in addition to tolling services, additional services that are essential for Cabot Switzerland, such as receiving raw materials, monitoring quality, preparing orders, packaging finished products and taking inventories.
- 20 Thirdly, as regards the possibility of receiving and using the services provided for the needs of that establishment specific to Cabot Switzerland, the Belgian State submits that the structure made available to Cabot Switzerland by Cabot Plastics enables it to receive and use the products resulting from the tolling, in order to carry out its own supply of goods in Belgium, from its fixed establishment. Fourthly, according to the Belgian State, that establishment has a sufficient degree of permanence, by reason of the very fact that the agreement of 14 February 2012 was concluded.
- 21 The referring court submits that Cabot Switzerland has established its place of business in Switzerland, since its legal registered office and its office premises employing 47 people are located there and that it is in that country that strategic and general policy decisions of that undertaking are taken, various contracts are concluded and its board of directors meets. However, according to the referring court, the fact that Cabot Switzerland's place of business is in Switzerland does not mean *ipso facto* that the place of supply of services is located in that State, since Article 44 of the VAT Directive lays down a special rule concerning the place of supply when services are provided to a fixed establishment of the taxable person in a place other than where his or her business is established.
- 22 It maintains, moreover, that the Court has not yet ruled on a case sufficiently similar to the present one, capable of dispelling any doubts as to the interpretation to be given to the applicable EU law. It notes, in that respect, first, that Cabot Plastics is a legally separate entity from Cabot Switzerland, of which it is not a subsidiary, and, secondly, that the tax authority regards Cabot Plastics both as a service provider and as constituting the technical and human resources of Cabot Switzerland.
- 23 The referring court therefore raises the question whether a taxable person has a suitable structure, in terms of its own resources, constituting its fixed establishment, where those resources belong to the company providing services to it, but, pursuant to a contract concluded between that taxable person and that company, the latter undertakes to use those resources, exclusively or almost exclusively, to provide those services. In particular, since the Court has held that a structure without staff cannot be classified as a 'fixed establishment' (judgment of 3 June 2021, *Titanium*, C-931/19, EU:C:2021:446), the referring court asks whether, in such circumstances, the staff of the provider of the services concerned, acting as directed by the recipient of the services in accordance with an agreement between those parties, could be regarded as being 'own' staff of the recipient of the services.
- 24 The referring court also questions the effect which supply of goods by Cabot Switzerland in Belgium, using technical and human resources of Cabot Plastics, could have on identifying a fixed establishment of Cabot Switzerland in that country.
- 25 In those circumstances, the *cour d'appel de Liège* (Court of Appeal, Liège) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) In the case of a supply of services by a taxable person established in one Member State to another taxable person acting as such, whose business is established outside the European Union, where those persons are separate and legally independent entities but form part of the same group, where the service provider contractually undertakes to use its equipment and its staff exclusively for the production of products for the recipient of the services and where those products are then sold by that recipient, giving rise to taxable supplies of goods for which the

service provider renders logistical assistance and which take place in the Member State in question; are Article 44 of [the VAT Directive] and Article 11 of [Implementing Regulation No 282/2011] to be interpreted as meaning that the taxable person established outside the European Union must be deemed to have a fixed establishment in that Member State?

- (2) Are Article 44 of [the VAT Directive] and Article 11 of [Implementing Regulation No 282/2011] to be interpreted as meaning that a taxable person may have a fixed establishment where the required human and technical resources are those of its service provider, which is legally independent but forms part of the same group, and which contractually undertakes to use them exclusively for the benefit of that taxable person?
- (3) Are Article 44 of [the VAT Directive] and Article 11 of [Implementing Regulation No 282/2011] to be interpreted as meaning that a taxable person has a fixed establishment in the Member State of its service provider if the latter supplies it, pursuant to an exclusive contractual undertaking, with a series of services which are ancillary or additional to tolling in the strict sense, thus contributing to the completion of sales concluded by that taxable person from its place of business outside the European Union but giving rise to taxable supplies of goods which, under the VAT legislation, take place in the territory of that Member State?

Consideration of the questions referred

- 26 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 44 of the VAT Directive and Article 11 of Implementing Regulation No 282/2011 must be interpreted as meaning that a taxable person receiving services, whose business is established outside the European Union, has a fixed establishment in the Member State in which the provider of the services concerned – which is legally independent from that recipient – is established, where the taxable person providing services provides to that taxable person receiving services, pursuant to an exclusive contractual undertaking, those services and a series of ancillary or additional services, contributing to the business of the taxable person receiving services in that Member State, and the human and technical resources of that possible fixed establishment belong to the service provider.
- 27 Article 44 of the VAT Directive states that the place of supply of services to a taxable person acting as such is to be the place where that person has established its business. However, if those services are provided to a fixed establishment of the taxable person located somewhere other than that place, the place of supply of those services is to be the place where that fixed establishment is located.
- 28 Article 44 of the VAT Directive is a rule determining the place where provisions of services are taxed by designating in a uniform manner the point of reference for tax purposes. Its object is to avoid, first, conflicts of jurisdiction which may result in double taxation and, secondly, non-taxation (see, to that effect, *inter alia*, judgment of 16 October 2014, *Welmory*, C-605/12, EU:C:2014:2298, paragraphs 42, 50 and 51).
- 29 The EU legislature used, as the primary point of reference for determining the place of supply of services to a taxable person, the place where that person has established its business, because, as an objective criterion that is simple and practical, it offers great legal certainty. By contrast, the connection to the taxable person's fixed establishment, referred to in the second sentence of Article 44 of the VAT Directive, is a secondary point of reference which is an exception to the general rule and is taken into consideration provided that certain conditions are satisfied (see, to that effect, judgments of 16 October 2014, *Welmory*, C-605/12, EU:C:2014:2298, paragraphs 53 to 56; of 7 August 2018, *TGE Gas Engineering*, C-16/17, EU:C:2018:647, paragraph 49; and of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraph 29).
- 30 Therefore, as the Court held, in particular, in paragraph 53 of the judgment of 16 October 2014, *Welmory* (C-605/12, EU:C:2014:2298), it is only if that place of business does not lead to a rational result or creates a conflict with another Member State that another establishment other than the place of business may come into consideration, since, as is apparent from paragraph 55 of that judgment, the presumption that the services are provided at the place where the taxable person receiving them has established its business makes it possible both for the competent authorities of the Member States and

for service providers to avoid having to undertake complex investigations in order to determine the point of reference for tax purposes.

- 31 As regards the concept of ‘fixed establishment’, for the purposes of Article 44 of the VAT Directive, it refers, in accordance with Article 11 of Implementing Regulation No 282/2011, to any establishment, other than the place of establishment of a business characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services provided to it for its own needs (see, to that effect, judgments of 16 October 2014, *Welmory*, C-605/12, EU:C:2014:2298, paragraph 58, and of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraph 31). It follows that, as the Court stated in paragraph 59 of the judgment of 16 October 2014, *Welmory* (C-605/12, EU:C:2014:2298), for a company to be considered as having a fixed establishment in a Member State in which the services concerned are provided to it, it must have in that Member State a sufficiently permanent and suitable structure to enable it to receive the services concerned there and to use them for its business.
- 32 It should also be noted that the matter of whether there is a fixed establishment within the meaning of the second sentence of Article 44 of the VAT Directive must not be determined by reference to the taxable person providing the services but by reference to the taxable person receiving them (see, to that effect, judgment of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraph 30).
- 33 It is therefore necessary to assess whether, in circumstances such as those at issue in the main proceedings, a taxable person receiving services may be regarded as having, to a sufficient degree of permanence and suitability, human and technical resources in the Member State where the services are provided and, if necessary, whether those resources actually enable it to receive and use those services there.
- 34 In particular, the referring court questions the effect, in that regard, of the fact, first, that the recipient and the provider of services are legally independent entities but form part of the same group of companies, secondly, that the human and technical resources concerned belong to the service provider and, thirdly, that the latter undertakes contractually to use its equipment and its staff exclusively for the provision of services, in the present case tolling, and that that company provides, pursuant to an exclusive contractual undertaking, a series of services that are ancillary or additional to those first services, by providing, inter alia, logistical assistance, contributing to the business of the recipient, which gives rise to taxable supplies of goods in the Member State where the recipient’s possible fixed establishment is located.
- 35 As regards, in the first place, the suitable structure of a fixed establishment in terms of human and technical resources, the Court has held that a structure that is evidenced by the existence of such resources cannot exist only occasionally. Although it is not a requirement for a taxable person itself to own the human or technical resources in another Member State, it is however necessary for that taxable person to have the right to dispose of those human and technical resources in the same way as if they were its own, on the basis, for example, of employment and leasing contracts which make those resources available to it and cannot be terminated at short notice (see, to that effect, judgment of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraphs 37 and 41).
- 36 As regards the fact that the provider and the recipient of the services are linked and, in particular, that the companies at issue in the main proceedings belong to the same group, while being legally independent of each other, it should be recalled that the Court has held that the classification as a ‘fixed establishment’, which must be assessed in the light of the economic and commercial reality, cannot depend solely on the legal status of the entity concerned, and the fact that a company has a subsidiary in a Member State does not, in itself, mean that it also has its fixed establishment there (see, to that effect, judgment of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraphs 38 and 40 and the case-law cited).
- 37 As regards the fact that the taxable person providing the services undertakes contractually to use its equipment and its staff exclusively to provide the services concerned, it is apparent from the case-law of the Court that a legal person, even if it has only one customer, is assumed to use the technical and human resources at its disposal for its own needs. It is therefore only if it were established that, by

reason of the applicable contractual provisions, a company receiving services had the resources of its service provider at its disposal as if they were its own that it could be regarded as having a suitable structure with a sufficient degree of permanence, in terms of human and technical resources, in the Member State where its service provider has established its business (see, to that effect, judgment of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraph 48).

- 38 Therefore, the fact that, in the case in the main proceedings, the human and technical resources concerned belong not to Cabot Switzerland, but to Cabot Plastics, does not, as such, preclude the possibility that the first company has a fixed establishment in Belgium, provided that it has immediate and permanent access to those resources as if they were its own resources. In that regard, account could be taken, without being decisive in itself, inter alia, of the fact that, as is apparent from the documents before the Court, Cabot Plastics has undertaken to use its own equipment exclusively for the production of the goods covered by the agreement concluded with Cabot Switzerland, that that agreement has been in force since 2012, and that those services constitute almost all of Cabot Plastics' turnover.
- 39 However, as the European Commission states in its written observations, since the provider of the services concerned remains responsible for its own resources and provides those services at its own risk, the contract for the provision of services, while exclusive, does not in itself mean that the provider's resources become those of its customer.
- 40 As regards, in the second place, the criterion, also laid down in Article 11 of Implementing Regulation No 282/2011, according to which the human and technical resources of a fixed establishment must enable it to receive and use services provided to it for its own needs, it is necessary, first, to distinguish the tolling services provided by Cabot Plastics to Cabot Switzerland from the goods resulting from that work which the latter company sells. Those services and sales constitute distinct transactions, which are subject to different schemes of VAT (see, to that effect, judgment of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraph 52 and the case-law cited). Therefore, for the purposes of establishing the place where those services are received by Cabot Switzerland, it is necessary to identify the place where the human and technical resources which that company uses for that purpose are situated, and not the place where the resources it uses for its sales activity are located.
- 41 Next, it is clear from the case-law of the Court that the same means cannot be used both to provide and receive the same services (see, to that effect, judgment of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraph 54). In the present case, subject to the referring court's assessment, it is not apparent from the file before the Court that it is possible to distinguish the resources used by Cabot Plastics for its tolling services from those that are, according to the tax authority, used by Cabot Switzerland to receive those services in Belgium, within its alleged fixed establishment, which, according to that authority, is constituted only by the resources belonging to Cabot Plastics.
- 42 The referring court is uncertain, moreover, as to the effect of the fact that, in order to determine the place of supply of tolling services at issue in the main proceedings, the service provider carries out, pursuant also to the exclusive contract concluded with the recipient of those services, a series of services, which that court describes as 'ancillary' or 'additional' to tolling, namely management of the stock of raw materials, inventory of those materials at the end of the year, quality control, stock management of finished products and preparation of orders before sending. The referring court submits that Cabot Plastics provides logistical assistance to Cabot Switzerland, thereby contributing to the business of Cabot Switzerland, giving rise, inter alia, to taxable supplies of goods in Belgium where, according to the tax authority, Cabot Switzerland has its fixed establishment.
- 43 As is apparent from paragraph 40 above, as regards whether a taxable person receiving services receives those services within its fixed establishment, it is necessary to distinguish, first, the provision of those services and the capacity of that taxable person receiving services to receive them within such an establishment and, secondly, the transactions which that taxable person carries out itself in the course of its business, such as, in the present case, the sale of goods resulting from tolling. It follows that the fact that the service provider also provides the recipient of those services with the abovementioned ancillary services, thereby facilitating the business of that recipient, such as the sale of

goods resulting from the tolling, has no bearing on the question of the existence of a fixed establishment of that recipient.

- 44 In addition, it is apparent from the case-law of the Court that the fact that the economic activities of companies which are linked contractually by an agreement on the provision of services form an economic whole and that the results of those activities are of benefit essentially to consumers in the Member State where the service provider has its place of business is not material for determining whether the recipient of those services possesses a fixed establishment in that Member State (see, to that effect, judgment of 16 October 2014, *Welmory*, C-605/12, EU:C:2014:2298, paragraph 64). The Court has also held that a fixed installation used only for preparatory or auxiliary activities in relation to the business of the recipient of the services concerned does not constitute a fixed establishment (judgment of 28 June 2007, *Planzer Luxembourg*, C-73/06, EU:C:2007:397, paragraph 56).
- 45 Having regard to the above and subject to verification by the referring court, it appears that the tolling services at issue in the main proceedings are received and used by Cabot Switzerland, for its business of selling the goods resulting from those services, in Switzerland, since that company does not have a suitable structure for that purpose in Belgium.
- 46 In the light of the foregoing, the answer to the questions referred is that Article 44 of the VAT Directive and Article 11 of Implementing Regulation No 282/2011 must be interpreted as meaning that a taxable person receiving services, whose business is established outside the European Union, does not have a fixed establishment in the Member State in which the provider of the services concerned – which is legally independent from that recipient – is established, where that recipient does not have a suitable structure in terms of human and technical resources capable of constituting that fixed establishment, even where the taxable person providing the services provides to that taxable person receiving services, pursuant to an exclusive contractual undertaking, tolling services and a series of ancillary or additional services, contributing to the business of that taxable person receiving services in that Member State.

Costs

- 47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8/EC of 12 February 2008, and Article 11 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112,

must be interpreted as meaning that a taxable person receiving services, whose business is established outside the European Union, does not have a fixed establishment in the Member State in which the provider of the services concerned – which is legally independent from that recipient – is established, where that recipient does not have a suitable structure in terms of human and technical resources capable of constituting that fixed establishment, even where the taxable person providing the services provides to that taxable person receiving services, pursuant to an exclusive contractual undertaking, tolling services and a series of ancillary or additional services, contributing to the business of that taxable person receiving services in that Member State.

[Signatures]

* Language of the case: French.