

SUMMARY

ECJ 26 January 2012, case C-218/10 (ADV Allround Vermittlungs AG - v - Finanzamt Hamburg-Bergedorf), Free movement, Tax

Facts

ADV Allround was a German company that supplied self-employed truck drivers to haulage contractors in (mainly) Germany and Italy. It charged its customers the cost of the drivers plus a profit margin. Initially, it did not add VAT when invoicing Italian customers, taking the view that its services should be classified as “supply of staff” within the meaning of the “Sixth Directive” 77/388. The German tax office (*Finanzamt*) disagreed, taking the position that ADV Allround should have charged its Italian customers German VAT.

National proceedings

ADV Allround challenged the Tax Office’s position with the Finance Court in Hamburg, which referred three questions to the ECJ. Only the first question is related to employment law.

ECJ’s findings (on question 1 only)

1.

The Sixth Directive contains rules for determining the place where services are deemed to be supplied for tax purposes. The objective of those rules is to avoid conflicts of jurisdiction which may result in double taxation or non-taxation (¶ 23-27).

2.

An interpretation of the Sixth Directive under which the term “staff” covers not only employed

persons but also self-employed persons better reflects the objective of a conflict-of-laws rule such as that at issue (¶ 28).

Ruling

The sixth indent of Article 9(2)(e) of Sixth Council Directive 77/388/EEC [É] must be interpreted as meaning that the “supply of staff” referred to in that provision also includes the supply of self-employed persons not in the employ of the trader providing the service.

Creator: European Court of Justice (ECJ)

Verdict at: 2012-01-26

Case number: C-218/10