

	C-71/18 KPC Herning	C-461/08 Don Bosco Onroerend Goed BV
<b>Topic</b>	Taxable transaction, VAT Exemption  Transfer of land; VAT exemption if including building, which will be demolished	Taxable transaction, VAT Exemption  Supply of land occupied by a partly demolished building in place of which a new building is to be constructed
<b>Articles in the EU VAT Directive</b>	Article 12(1) (a) and (b) and (2) and (3) and Article 135(1) (j) and (k) of the EU VAT Directive 2006/112/EU	Articles 13B(g) and 4(3)(a) of the Sixth VAT Directive
<b>Date of the ECJ Judgement</b>	4 September 2019 Link: <a href="#">Curia</a>	19 November 2009 Link: <a href="#">Curia</a>
<b>Country</b>	Denmark	Netherlands
<b>Facts</b>	A site in the area at the port of Odense with a warehouse on it was sold. KPC, a project developer purchased and sold to a housing association. The purchase transaction was exempted from VAT as it related to a property with an existing building on it. The sale by KPC was also tax exempt. At the time of the purchase and the subsequent resale, the warehouse was fully functional. However, the warehouse was not suitable for residential units. At the time of the transactions at issue, the parties involved had a common understanding that the warehouse, save for part of the eastern gable, was to be demolished in order for the housing unit project to be carried through to completion.	Stichting Leusderend (“vendor”) sold to Don Bosco a plot of land occupied by two dilapidated buildings previously housing a school with boarding facilities. Don Bosco planned to have those two buildings completely demolished so that it might then construct new buildings on the land that had thus become available. It had been agreed that the vendor would apply for a demolition licence, conclude an agreement with a contractor for the demolition of the buildings and be charged the cost thereof. According to the agreement between the vendor and Don Bosco, Don Bosco would bear that cost through an increase in the selling price, except for the cost of removing asbestos, which would be payable by the vendor.
<b>Issue</b>	Tax authorities considered the purchase and sale transaction as being subject to VAT, and not exempted.  If the asset is considered as a building plot (land), it is deemed to be a taxable transaction without exemption. If considered as the sale of a building with land, the transaction is exempted from VAT.	Following the acquisition of the property, Don Bosco received an assessment of outstanding transfer duty. The objection lodged against that assessment was rejected by decision of the tax inspector.
<b>Question to ECJ</b>	Can a supply of land on which at the time of supply there is a building, qualify as a sale of building land subject to VAT, when it is the parties’ intention that the building is to be demolished completely or partially in order to make room for a new building?’	National court asks essentially the supply of land occupied by a building that is to be demolished in order to be replaced by a new construction, and whose demolition had already begun before that supply took place, is exempt from VAT.
<b>Judgment</b>	Article 12 (1) (a) and (b), and paragraphs 2 and 3, and Article 135 (1) (j) and (k) of the 6th VAT Directive, must be interpreted as meaning that a supply of land that includes a building, <b>cannot</b> be described as a delivery of a “building plot” when this operation is economically independent of other services and does not form, with them, a single operation, even if the intention of the parties was that the building is totally or partially demolished to make room for a new building.	The exemption from VAT (Art. 13B(g)) <b>does not</b> cover the supply of land still occupied by a dilapidated building that is to be demolished and replaced by a new building and whose demolition, paid for by the vendor, had already begun before the actual supply took place. For VAT purposes, such supply and such demolition form a single transaction, given that, taken as a whole, the aim of the transactions was not to supply the existing building and the land it stands on but land that has not been built on, regardless of how far demolition of the old building had progressed at the moment the land was actually supplied.
<b>Conclusion</b>	The transaction is <b>exempted</b> from VAT	The transaction is <b>not exempted</b> from VAT