VAT – Letting of bare premises – Scope of Member States’ room for manoeuvre in specifying the scope and modalities for exercising the option (Article 137 of the VAT Directive): no power to restrict the exemptions provided for in Article 135 of the Directive – Interpretation of Article 260(2) of the General Tax Code in accordance with the Directive: power to opt for taxation of all or part of the eligible rentals made in the same building.

It follows from Articles 135 and 137 of Directive 2006/112/EC of 28 November 2006, clarified by the case-law of the Court of Justice of the European Union, that, insofar as Article 137 does not specify the conditions under which and the manner in which the scope of the right to opt for the taxation of the letting and leasing of immovable property may be restricted, it is for each Member State to specify, in its national law, the scope of the right of option and to lay down the rules by virtue of which certain taxable persons may benefit from it. However, these provisions do not give Member States the power to make the exemptions provided for in Article 135(1) subject to conditions or to restrict them in any way, but merely give them the power to allow the beneficiaries of these exemptions to opt for taxation themselves, to a greater or lesser extent, if they consider it to be in their interest.

Interpreted in accordance with Article 137 of the Directive of 28 November 2006, which they transpose, the provisions of Article 260(2) of the General Tax Code (CGI) and Article 193 of Annex II to the CGI allow a taxpayer to opt for the submission to value added tax (VAT) of the rental of only some of the premises he operates in the same building. Although they also allow him to opt for the taxation of all the rentals he makes in this building and if, in this case, only those rentals that relate to premises that do not give rise to the right of option remain, where applicable, exempt from VAT, they do not oblige him to do so. An option exercised with a view to submitting to VAT the rental of only some of the premises of the same building does not have the effect of subjecting the rental of other premises to that tax.