Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

29 June 2023 (*)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Special scheme for travel agents – Scope – Consolidator of accommodation services which purchases such services on its own behalf and resells them to other professionals without ancillary services)

In Case C?108/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny S?d Administracyjny (Supreme Administrative Court, Poland), made by decision of 26 August 2021, received at the Court on 16 February 2022, in the proceedings

Dyrektor Krajowej Informacji Skarbowej

v

C. sp. z o.o., in liquidation,

THE COURT (Eighth Chamber),

composed of M. Safjan, President of the Chamber, N. Jääskinen and M. Gavalec (Rapporteur), Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Polish Government, by B. Majczyna, acting as Agent,

– the Czech Government, by O. Serdula, M. Smolek and J. Vlá?il, acting as Agents,

– the European Commission, by ?. Habiak and J. Jokubauskait?, 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 306 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; ‘the VAT Directive’).

2 The request has been made in proceedings between the Dyrektor Krajowej Informacji Skarbowej (Director of the National Tax Information Service, Poland) ('the tax authority') and C. sp. z o.o., in liquidation, concerning the application of the special value added tax (VAT) scheme for travel agents to the resale by C., in its own name, of accommodation services to other taxable persons without ancillary services.

Legal context

European Union law

3 Title XII of the VAT Directive, entitled 'Special schemes', includes Chapter 3, entitled 'Special scheme for travel agents', which contains Article 306, which provides:

'1. Member States shall apply a special VAT scheme, in accordance with this Chapter, to transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities.

This special scheme shall not apply to travel agents where they act solely as intermediaries and to whom point (c) of the first paragraph of Article 79 applies for the purposes of calculating the taxable amount.

2. For the purposes of this Chapter, tour operators shall be regarded as travel agents.'

4 Article 307 of that directive provides:

'Transactions made, in accordance with the conditions laid down in Article 306, by the travel agent in respect of a journey shall be regarded as a single service supplied by the travel agent to the traveller.

The single service shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has carried out the supply of services.'

5 Under Article 308 of the VAT Directive:

'The taxable amount and the price exclusive of VAT, within the meaning of point (8) of Article 226, in respect of the single service provided by the travel agent shall be the travel agent's margin, that is to say, the difference between the total amount, exclusive of VAT, to be paid by the traveller and the actual cost to the travel agent of supplies of goods or services provided by other taxable persons, where those transactions are for the direct benefit of the traveller.'

6 Article 309 of that directive provides:

'If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the [European] Community, the supply of services carried out by the travel agent shall be treated as an intermediary activity exempted pursuant to Article 153.

If the transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.'

7 Article 310 of the VAT Directive provides:

'VAT charged to the travel agent by other taxable persons in respect of transactions which are referred to in Article 307 and which are for the direct benefit of the traveller shall not be deductible

or refundable in any Member State.’

Polish law

8 Article 119 of the ustawa o podatku od towarów i us?ug (Law on the tax on goods and services) of 11 March 2004 (Dz. U. No 54, heading 535; ‘the Law on VAT’) provides:

‘1. The taxable amount in respect of the provision of tourist services shall be the amount of the margin, reduced by the amount of tax due, without prejudice to paragraph 5.

2. The “margin” referred to in paragraph 1 shall mean the difference between the amount to be paid by the purchaser of the service and the cost of the purchase by the taxable person of goods and services from other taxable persons for the direct benefit of the traveller; “services for the direct benefit of the traveller” shall mean services forming part of the tourist services provided and, in particular, transport, accommodation, meals and insurance.

3. The provisions of paragraph 1 shall apply regardless of who purchases the tourist services where the taxable person:

(1) (repealed)

(2) acts for the purchaser of the service in his or her own name and on his or her own behalf;

(3) in respect of the supply of a service, purchases goods and services from other taxable persons for the direct benefit of the traveller;

(4) (repealed)

…’

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

9 C., a company governed by Polish law, which is a taxable person for VAT purposes, carries on an economic activity as a ‘hotel services consolidator’. In the context of that activity, it offers its customers, namely entities carrying on a commercial activity, the possibility of booking accommodation facilities in hotels and other establishments with a similar function located in Poland and abroad.

10 Given that C. does not have its own accommodation capacity, it purchases accommodation services in its own name and on its own behalf from other VAT taxable persons, which are then resold by the company to its customers.

11 Depending on its customers’ needs and expectations, the company also provides advice on the choice of accommodation and help with travel arrangements. However, the referring court observes that C. usually provides only an accommodation service. The price at which C. resells that accommodation service includes the cost of purchasing that service and C.’s margin in the form of a booking price intended to cover the transaction fee.

12 In a tax ruling issued on 27 April 2017, the tax authority took the view that the resale of accommodation services by C. is not covered by the concept of a ‘tourist service’ referred to, in essence, in Article 119 of the Law on VAT, contrary to what C. maintained. That authority essentially took the view that, in order for a service to be regarded as a tourist service, it must, as a complex service made up of a number of external and internal services, consist of more than one service. However, the services provided by C., which cover only accommodation, cannot

constitute a tourist service because they do not involve such a complex service.

13 C. lodged an appeal against the tax authority's decision before the Wojewódzki S?d Administracyjny we Wroc?awiu (Regional Administrative Court, Wroc?aw, Poland), which, in a judgment of 16 November 2017, declared the appeal well founded and ruled that the services provided by C. were to be taxed as 'tourist services' under the special scheme provided for in Article 119 of the Law on VAT. That court based its reasoning on a literal and contextual interpretation of that provision, and on the fact that that provision transposes Article 306 of the VAT Directive and that, consequently, the case-law of the Court of Justice of the European Union should be applied in that regard.

14 The tax authority lodged an appeal on a point of law against that judgment before the Naczelny S?d Administracyjny (Supreme Administrative Court, Poland), which is the referring court. That authority alleges that the court of first instance infringed Article 119(1) of the Law on VAT in so far as it held that the service concerned did not have to satisfy the requirement relating to complexity in order to be considered a 'tourist service'. According to the tax authority, an accommodation service, offered on its own, does not constitute a tourist service and, consequently, cannot be eligible for the special scheme for travel agents, which provides for VAT to be charged on the margin.

15 Hearing the appeal in question, the referring court takes the view that, in order to determine whether the service at issue in the main proceedings is covered by the special scheme provided for in Article 119 of the Law on VAT, it is appropriate to examine, inter alia, Article 306 of the VAT Directive. In that regard, the referring court relies on the case-law of the Court of Justice from which, as it observes, it is apparent, in essence, that the special scheme laid down in Articles 306 to 310 of the VAT Directive also applies to accommodation services sold without ancillary services. The referring court therefore takes the view that such services may be covered by that special scheme even though they are not complex in nature.

16 It states that that interpretation is compatible with the principle of neutrality provided for in the VAT Directive. If the resale of accommodation services provided without ancillary services were, unlike the resale of such services combined with additional services, to be taxed in accordance with general rules, the principle of neutrality would be infringed.

17 However, the referring court takes the view that the interpretation of the relevant provision of the VAT Directive by the Court of Justice would make it possible to dispel the uncertainty that remains in the case before it.

18 In those circumstances, the Naczelny S?d Administracyjny (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 306 of [the VAT Directive] be interpreted as being applicable to a taxable person who is a hotel services consolidator and who purchases accommodation services and resells them to other economic operators, in cases where those transactions are not accompanied by any other ancillary services?'

The question referred for a preliminary ruling

19 By its question, the referring court asks, in essence, whether Article 306 of the VAT Directive must be interpreted as meaning that the service provided by a taxable person, which consists in purchasing accommodation services from other taxable persons and reselling them to other economic operators, is covered by the special VAT scheme applicable to travel agents, even

though those services are not accompanied by ancillary services.

20 As a preliminary point, it must be noted that the special VAT scheme applicable to travel agents, laid down in Articles 306 to 310 of the VAT Directive, contains rules specific to the activity of travel agents, which derogate from the normal VAT regime. In that context, the Court has ruled that, as an exception to the normal system applicable under the VAT Directive, the scheme laid down in Articles 306 to 310 thereof must be applied only to the extent necessary to achieve its objective (judgment of 19 December 2017, *Skarpa Travel*, C?422/17, EU:C:2018:1029, paragraphs 24 and 27 and the case-law cited).

21 In this respect, the essential aim of the rules of the special VAT scheme applicable to transactions carried out by travel agents is to avoid the difficulties to which traders would be exposed by application of the normal principles of the VAT Directive concerning transactions involving the supply of services bought in from third parties. The application of the normal rules on the place of taxation, taxable amount and deduction of input tax would, by reason of the multiplicity of services and the places in which they are provided, entail practical difficulties for those undertakings of such a nature as to obstruct their operations (judgments of 12 November 1992, *Van Ginkel*, C?163/91, EU:C:1992:435, paragraph 14, and of 25 October 2012, *Kozak*, C?557/11, EU:C:2012:672, paragraph 19).

22 Specifically, under Article 306 of the VAT Directive, Member States are to apply the special VAT scheme to transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services bought in from third parties, in the provision of travel facilities.

23 In the present case, it is apparent from the request for a preliminary ruling that C., as a hotel services consolidator, purchases accommodation services in its own name from other taxable persons and then resells them to its customers, namely entities carrying on a commercial activity. It follows that a company such as C. satisfies the substantive conditions laid down in Article 306 of the VAT Directive in order to be eligible, in principle, for the special tax scheme provided for in that article.

24 Furthermore, it should be observed that, in the context of its activities, C. carries out transactions that are identical, or at least comparable, to those of a travel agent or tour operator. Thus, the referring court observes that, depending on its customers' needs and expectations, that company also occasionally provides advice on the choice of accommodation and help with travel arrangements.

25 However, it is necessary to assess whether the provision of accommodation services is covered by the special scheme for travel agents in cases where it is not accompanied by ancillary services.

26 In this regard, it is apparent from the case-law of the Court that the exclusion from the field of application of Article 306 of the VAT Directive of services supplied by a travel agent on the sole ground that they cover only the supply of accommodation would lead to a complicated tax system in which the VAT rules applicable would depend upon the constituents of the services offered to each traveller. Such a tax system would fail to comply with the aims of the directive (see, to that effect, judgment of 19 December 2018, *Alpenchalets Resorts*, C?552/17, EU:C:2018:1032, paragraphs 25 to 28 and the case-law cited).

27 It follows that the supply by a travel agent of holiday accommodation is covered by the special scheme for travel agents, even if that service covers accommodation only. In that regard, it should be observed that, since the mere supply of holiday accommodation by the travel agent is

sufficient for the special scheme under Articles 306 to 310 of the VAT Directive to apply, the importance of other supplies of goods or services, which may be combined with the supply of accommodation, cannot have a bearing on the legal classification of such a situation, that is to say, that that situation is covered by the special scheme for travel agents (see, to that effect, judgment of 19 December 2018, *Alpenchalets Resorts*, C?552/17, EU:C:2018:1032, paragraphs 29 and 33).

28 Consequently, the Court has held that Articles 306 to 310 of the VAT Directive must be interpreted as meaning that the mere supply by a travel agent of holiday accommodation rented from other taxable persons or such a supply of a holiday residence combined with the supply of additional ancillary services, regardless of the importance of those ancillary services, each amount to a single service covered by the special scheme for travel agents (judgment of 19 December 2018, *Alpenchalets Resort*, C?552/17, EU:C:2018:1032, paragraph 35).

29 In the present case, it is apparent from the request for a preliminary ruling that C. sells services relating to the provision of accommodation in hotels and other establishments with a similar function in Poland and abroad. However, the case-law of the Court delivered in the context of the supply by a travel agent of holiday accommodation, as set out in paragraphs 26 to 28 of the present judgment, also applies to the sale of services relating to the provision of accommodation in hotels and other establishments. In that regard, it should be noted in particular that the fact that the hotels and establishments that are the subject of those services are in a multiplicity of locations could in itself cause practical difficulties which the special tax scheme in question seeks to avoid, in accordance with the case-law referred to in paragraph 21 of the present judgment.

30 In the light of the foregoing considerations, the answer to the question referred is that Article 306 of the VAT Directive must be interpreted as meaning that the service provided by a taxable person, which consists in purchasing accommodation services from other taxable persons and reselling them to other economic operators, is covered by the special VAT scheme applicable to travel agents, even though those services are not accompanied by ancillary services.

Costs

31 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 (Eighth Chamber) hereby rules:

Article 306 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

must be interpreted as meaning that the service provided by a taxable person, which consists in purchasing accommodation services from other taxable persons and reselling them to other economic operators, is covered by the special value added tax scheme applicable to travel agents, even though those services are not accompanied by ancillary services.

[Signatures]

* Language of the case: Polish.