JUDGMENT OF THE COURT (Third Chamber)

21 June 2012 (*)

(Taxation — VAT — Sixth Directive — Directive 2006/112/EC — Right to deduct — Conditions governing the exercise of that right — Article 273 — National measures to combat fraud — Practice of the national tax authorities — Refusal of the right to deduct in the event of improper conduct on the part of the issuer of the invoice relating to the goods or services in respect of which the exercise of that right is sought — Burden of proof — Obligation of the taxable person to satisfy himself as to the propriety of the conduct of the issuer of that invoice and to provide proof thereof)

In Joined Cases C-80/11 and C-142/11,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Baranya Megyei Bíróság (Hungary) and the Jász-Nagykun-Szolnok Megyei Bíróság (Hungary), made by decisions of 9 February and 9 March 2011, received at the Court on 22 February and 23 March 2011, in the proceedings

Mahagében kft

v

Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó F?igazgatósága (C-80/11),

and

Péter Dávid

v

Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Adó F?igazgatósága (C-142/11),

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, J. Malenovský, E. Juhász, G. Arestis and T. von Danwitz (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 15 March 2012,

after considering the observations submitted on behalf of:

– the Hungarian Government, by M. Fehér, K. Szíjjártó and K. Veres, acting as Agents,

– the Spanish Government, by S. Centeno Huerta, acting as Agent,

– the United Kingdom Government, by P. Moser, Barrister,

– the European Commission, by V. Bottka, A. Sipos and C. Soulay, acting as Agents,

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

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 2001/115/EC of 20 December 2001 (OJ 2002 L 15, p. 24) ('the Sixth Directive'), and of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The references have been made in two sets of proceedings between, first, Mahagében kft ('Mahagében') and the Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó F?igazgatósága (Regional Directorate-General for Tax of Dél-Dunántúli), and, second, Mr Dávid and the Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Adó F?igazgatósága (Regional Directorate-General for Tax of Észak-Alföldi), concerning the refusal of the tax authorities to allow the right to deduct input value added tax ('VAT') on transactions considered to be suspicious.

Legal context

European Union law

3 Pursuant to Articles 411 and 413 thereof, Directive 2006/112 repealed and replaced, as from 1 January 2007, European Union law on VAT, including the Sixth Directive. According to recitals 1 and 3 in the preamble to Directive 2006/112, the recasting of the Sixth Directive was necessary to ensure that all the applicable provisions are presented in a clear and rational manner in a revised structure and wording while, in principle, no material changes are made. The provisions of Directive 2006/112 are therefore, essentially, identical to the corresponding provisions of the Sixth Directive.

4 Article 2(1)(a) and (c) of Directive 2006/112, which essentially repeats the wording of Article 2(1) of the Sixth Directive, makes the supply of goods and services for consideration within the territory of a Member State by a taxable person acting as such subject to VAT.

5 Under Article 167 of Directive 2006/112, worded in identical terms to Article 17(1) of the Sixth Directive, '[a] right of deduction shall arise at the time the deductible tax becomes chargeable'.

6 Article 168(a) of Directive 2006/112, which essentially repeats the wording of Article 17(2)(a) of the Sixth Directive, in the version resulting from Article 28f(1) of that directive, provides:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person'.

7 Article 178 of Directive 2006/112, which features in Chapter 4, headed 'Rules governing

exercise of the right of deduction', of Title X of the directive, provides:

'In order to exercise the right of deduction, a taxable person must meet the following conditions:

(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240;

...'

8 That provision corresponds to Article 18(1)(a) of the Sixth Directive, in the version resulting from Article 28f(2) of that directive, which refers to the requirements of Article 22(3) thereof, in the version resulting from Article 28h thereof.

9 Under Article 220(1) of Directive 2006/112, which repeats in essence the wording of Article 22(3)(a) of the Sixth Directive, in the version resulting from Article 28h of the latter directive, every taxable person is required to ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of supplies of goods or services which he has made to another taxable person or to a non-taxable legal person.

10 Article 226 of Directive 2006/112 essentially repeats the wording of Article 22(3)(b) of the Sixth Directive, in the version resulting from Article 28h of the latter directive, and lists the only details which, without prejudice to the particular provisions laid down in Directive 2006/112, are required for VAT purposes on invoices issued pursuant to Articles 220 and 221 of that directive.

11 Article 273 of Directive 2006/112, the wording of which is essentially identical to that of Article 22(8) of the Sixth Directive, in the version resulting from Article 28h of the latter directive, provides:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.'

Hungarian law

12 Paragraph 32(1)(a) of Law LXXIV of 1992 on value added tax (az általános forgalmi adóról szóló 1992. évi LXXIV. törvény, *Magyar Közlöny* 1992/128 (XII.19.); 'the Law on VAT'), provides that a taxable person is to have the right to deduct, from the tax that he is required to pay, the amount of tax which another taxable person has passed on to him in connection with the supply of goods or the performance of services.

13 Under Paragraph 34(1) of that Law, '[t]he right of deduction may only be exercised by taxable persons who are required to pay tax and use single-entry or double-entry bookkeeping'.

14 According to Paragraph 35(1)(a) of that Law, unless otherwise prescribed by the Law on Taxation, the right of deduction may only be exercised by persons who hold documentation attesting to the amount of tax charged. Invoices, simplified invoices and documents which take the place of an invoice, made out in the name of the taxable person, are to be considered to constitute such documentation.

15 Paragraph 44(5) of the Law on VAT provides:

‘The issuer of the invoice or simplified invoice shall be responsible for the veracity of the information given therein. The taxation rights of the taxable person indicated as the purchaser in the receipt may not be called into question if that person acted with due diligence as regards the chargeable event, bearing in mind the circumstances under which the goods were supplied or the services performed.’

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

Case C-80/11

16 On 1 June 2007, Mahagében concluded a contract with Rómahegy-Kert kft (‘RK’) for the supply of unprocessed acacia logs between 1 June and 31 December 2007. During that period, RK issued sixteen invoices in the name of Mahagében for the delivery of various quantities of acacia logs. The number of the delivery note, attached as an annex, was also indicated on six of those invoices. RK declared all of the invoices in its tax return, stating that the deliveries had taken place, and paid the VAT following delivery. Mahagében also included those invoices in its tax return and exercised its right to deduct. The quantities of acacia logs purchased from RK were included in Mahagében’s stocks and were resold by it to various undertakings.

17 During an inspection of purchases and deliveries by RK, the tax authority concluded that RK did not have any reserves of acacia logs and that the quantity of acacia logs purchased during 2007 was insufficient to fulfil the orders invoiced to Mahagében. Although, during that inspection, the two contracting parties declared that they had not retained the delivery notes, Mahagében subsequently handed over copies of 22 delivery notes to the tax authorities as proof that the transactions at issue had taken place.

18 By decision dated 1 June 2010, the tax authority established a tax debt on the part of Mahagében and, furthermore, imposed on it a fine and late payment surcharge on the basis that Mahagében had no right of deduction in respect of those invoices issued by RK. Having regard to the result of the inspection carried out at RK’s premises, those invoices could not, the tax authority concluded, be regarded as authentic.

19 Mahagében’s administrative appeal against the decision of 1 June 2010 was rejected by the defendant in the main proceedings. That rejection was based, inter alia, on the finding that RK, as the issuer of the invoices in question, had not been able to produce any documents evidencing the corresponding transactions, such as delivery notes, that it could not have had the quantity of goods indicated on those invoices and that it did not have an appropriate lorry for delivery of those goods, nor any documentary evidence of the price paid for their transportation. Moreover, Mahagében had not acted with due diligence within the meaning of Paragraph 44(5) of the Law on VAT since it had not, inter alia, checked whether RK was an existing taxable person and whether it was in possession of the goods which Mahagében wished to purchase.

20 Mahagében brought an action before the Baranya Megyei Bíróság (Regional Court, Baranya) seeking to obtain annulment of the tax debt, fine and late payment surcharge imposed

on it. It claimed, inter alia, that it had acted with due diligence at the time of concluding the contract made with RK. Its role in the transaction was, it contended, limited to verifying that the supplying company was registered, had a tax registration number and was capable of carrying out the transaction in question. It had also satisfied itself as to the quality and quantity of the goods at the time of delivery at its registered office, which was the place of supply and sale according to that contract.

21 The Baranya Megyei Bíróság doubts that the right to deduct VAT can be refused merely because the issuer of the invoice did not enter the purchase of the goods concerned in its accounts, and that, without a lorry, it was unable to deliver the goods, even though it stated that it had supplied the goods and met its obligations as to declaration and payment of the tax.

22 Taking the view that the outcome of the main proceedings depends on the interpretation of European Union law, the Baranya Megyei Bíróság decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must Directive 2006/112 be interpreted as meaning that a taxable person who fulfils the material conditions for the right to deduct VAT in accordance with the provisions of that directive may be deprived of his right to deduct by national legislation or practice that prohibits deductions in respect of VAT paid when a product is bought, where the invoice is the only valid document that confirms that the product was sold, and the taxable person is not in possession of any document from the issuer of the invoice which certifies that it was in possession of the product, and could have supplied it or satisfied its obligations as regards declaration? May a Member State require the recipient of the invoice to be in possession of a document proving that it is in possession of the product, or that the product was supplied or delivered to it, to ensure the correct collection of VAT and to prevent evasion under Article 273 of the Directive?

(2) Is the concept of due diligence set out in Paragraph 44(5) of the … Law on VAT compatible with the principles of neutrality and proportionality already upheld several times by the … Court of Justice in connection with the application of … Directive [2006/112] if, in applying that concept, the tax authority and established case-law require the recipient of the invoice to ascertain whether the issuer of the invoice is a taxable person, whether it has entered goods purchased in its records and is in possession of the purchase invoice, and whether it has satisfied its obligations as to declaration and payment of VAT?

(3) Must Articles 167 and 178(a) of the Directive 2006/112 … be interpreted as meaning that they preclude national legislation or practice that requires a taxable person receiving an invoice to verify compliance with the law by the company issuing the invoice in order for the former to assert his right to deduct?’

Case C-142/11

23 The dispute in the main proceedings in Case C-142/11 concerns two distinct transactions.

24 First, Mr Dávid had undertaken, under a works contract, to carry out various construction works. After performance of that contract in May 2006, the project developer’s agent issued the certificate of completion of the work which indicated 1 992 hours worked on the basis of attendance registers stating, inter alia, the start and end dates of the work, the place where the work was carried out, the name, date of birth and signature of the workers as well as Mr Dávid’s name and stamp.

25 During a tax inspection concerning that transaction, Mr Dávid stated that he did not have any employees of his own and that he had used a subcontractor, Mr Máté, to carry out the work.

He was unable to name the individual workers employed by that subcontractor. The fee stipulated in the agreement between Mr Dávid and Mr Máté was paid on the basis of the certificate of completion of the work.

26 Tax inspections showed that Mr Máté also did not have any employees or equipment necessary to carry out the work in respect of which the invoices had been issued and that he had merely reproduced the invoices of another subcontractor. The latter, who was the father-in-law of Mr Máté, did not have any registered employees during the period in question and had not filed a tax return for the tax year at issue.

27 In the light of all those factors, the tax authority found, first, that the invoices issued by the latter subcontractor could not adequately establish, for legal purposes, that the economic transaction detailed in them had taken place and, second, that Mr Máté had not actually carried out any subcontracted activities. Even though the inspections carried out had not disputed the fact that the work had indeed taken place, or that it had been carried out by the workers named in the attendance registers, it was not possible to determine adequately for legal purposes which contractor had carried out the work and which undertaking had employed those workers. In those circumstances, the tax authority found, the invoices received by Mr Dávid did not reflect a genuine economic transaction and were therefore fictitious. Moreover, it found, Mr Dávid had not acted with due diligence within the meaning of Paragraph 44(5) of the Law on VAT.

28 Second, in 2006 Mr Dávid had undertaken to carry out for a company certain work which he completed using another subcontractor. However, at the time of the tax inspection, the latter subcontractor was already in liquidation. It was not possible to contact its former representative and no document was submitted to the liquidator. According to the tax authority, there was no evidence that the price and the parties indicated on the invoice issued by that subcontractor were genuine. Moreover, in the view of that authority, Mr Dávid had not acted with due diligence as required by the Law on VAT because he had not satisfied himself that that subcontractor had the necessary resources to carry out the work in question.

29 In those circumstances, the tax authority refused the right to deduct resulting from the two transactions at issue, held that Mr Dávid had incurred a VAT debt and imposed on him a fine and a late payment surcharge.

30 Mr Dávid brought an action before the Jász-Nagykun-Szolnok Megyei Bíróság (Regional Court, Jász-Nagykun-Szolnok) against the decision taken by the tax authority, claiming, inter alia, that he had shown due diligence. He stated that he was satisfied that the economic transaction had actually taken place and that he had checked the status of the invoice issuer as a taxable person. He could not be held liable for any failure on the part of the subcontractor to fulfil his tax obligations.

31 The Jász-Nagykun-Szolnok Megyei Bíróság is unsure as to whether the taxable person has the right to deduct input VAT without carrying out supplementary inspections in the case where the tax authority does not establish negligent or intentional conduct in regard to possible tax avoidance, attributable to the invoice issuer himself or to the issuers of other invoices received by him, of which the recipient of the invoice, namely the taxable person, was not aware or in which he did not collude.

32 That court takes the view that, in the light of the provisions of the Sixth Directive, the taxable person exercising the right of VAT deduction is not subject to strict liability in relation to the invoices addressed to him and cannot be made to bear the burden of proof of the conduct required by Paragraph 44(5) of the Law on VAT where there is fault on the part of the issuer of those invoices.

33 In those circumstances, the Jász-Nagykun-Szolnok Megyei Bíróság decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Are the provisions relating to VAT deductions in [the] Sixth Council Directive … and, as regards 2007, in … Directive 2006/112 … to be interpreted as meaning that the right of deduction of a taxable person may be restricted or prohibited by the tax authority, on the basis of strict liability, if the invoice issuer cannot guarantee that the involvement of further subcontractors complied with the rules?

(2) Where the tax authority does not dispute that the economic activity detailed in the invoice actually took place, nor that the form of the invoice complies with the legal provisions, may the authority lawfully prohibit a VAT refund if the identity of the other subcontractors used by the invoice issuer cannot be determined, or invoices have not been issued in accordance with the rules by the latter?

(3) Is a tax authority which prohibits the exercise of the right of deduction, [in circumstances such as those described in the second question], obliged to ensure during its procedures that the taxable person with the right of deduction was aware of unlawful conduct, possibly engaged in for the purpose of tax avoidance, of the companies behind the subcontracting chain, or even colluded in such conduct?’

34 By order of the President of the Court of 15 June 2011, Cases C-80/11 and C-142/11 were joined for the purposes of the written and oral procedures and of the judgment.

Consideration of the questions referred

35 First of all, it must be noted that, having regard to the various dates of the facts in the main proceedings, the questions submitted refer to both the Sixth Directive and Directive 2006/112. As was noted at paragraph 3 of the present judgment, the latter directive has not, in principle, made material changes to the Sixth Directive. In particular, the provisions of those two directives which are relevant in the context of the cases in the main proceedings are, in essence, identical. In those circumstances, it is sufficient to examine the questions referred in relation to the provisions of Directive 2006/112 (see, to that effect, Joined Cases C-180/10 and C-181/10 *S?aby and Others* [2011] ECR I-8461, paragraphs 28 and 49 to 51).

The questions referred in Case C-142/11

36 By these questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 167, 168(a), 178(a), 220(1) and 226 of Directive 2006/112 must be interpreted as precluding a national practice whereby the tax authority refuses a taxable person the right to deduct from the VAT which he is liable to pay the VAT due or paid in respect of services supplied to him on the ground that the issuer of the invoice relating to those services, or one of his suppliers, acted improperly, without that authority establishing that the taxable person concerned was aware of that improper conduct or colluded in that conduct himself.

37 In order to reply to those questions, it must first be borne in mind that, according to settled

case-law, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by the relevant European Union legislation (see, inter alia, Case C-78/00 *Commission* v *Italy* [2001] ECR I-8195, paragraph 28; Case C-25/07 *Sosnowska* [2008] ECR I-5129, paragraph 14; and Case C-274/10 *Commission* v *Hungary* [2011] ECR I-7289, paragraph 42).

38 As the Court has repeatedly held, the right to deduct provided for in Article 167 et seq. of Directive 2006/112 is an integral part of the VAT scheme and in principle may not be limited. In particular, the right to deduct is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (see, inter alia, Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 43; Joined Cases C-439/04 and C-440/04 *Kittel and Recolta Recycling* [2006] ECR I-6161, paragraph 47; Case C-392/09 *Uszodaépít?* [2010] ECR I-8791, paragraph 34; and *Commission* v *Hungary*, paragraph 43).

39 The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures neutrality of taxation of all economic activities, whatever the purpose or results of those activities, provided that they are themselves subject in principle to VAT (see, inter alia, *Gabalfrisa and Others*, paragraph 44; Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 78; *Kittel and Recolta Recycling*, paragraph 48; and Case C-438/09 *Dankowski* [2010] ECR I-14009, paragraph 24).

40 The question whether the VAT payable on the prior or subsequent sales of the goods concerned has or has not been paid to the public purse is irrelevant to the right of the taxable person to deduct input VAT. VAT applies to each transaction by way of production or distribution after deduction of the VAT directly borne by the various cost components (see order in Case C-395/02 *Transport Service* [2004] ECR I-1991, paragraph 26; judgments in Joined Cases C-354/03, C-355/03 and C-484/03 *Optigen and Others* [2006] ECR I-483, paragraph 54; and *Kittel and Recolta Recycling*, paragraph 49).

41 Secondly, it must be recalled that preventing possible tax evasion, avoidance and abuse is an objective recognised and encouraged by Directive 2006/112 (see, inter alia, *Halifax and Others*, paragraph 71; Case C-285/09 *R.* [2010] ECR I-12605, paragraph 36; and Case C-504/10 *Tanoarch* [2011] ECR I-10853, paragraph 50). In that regard, the Court has already held that EU law cannot be relied on for abusive or fraudulent ends (see, inter alia, Case C-32/03 *Fini H* [2005] ECR I-1599, paragraph 32; *Halifax and Others*, paragraph 68; and *Kittel and Recolta Recycling*, paragraph 54).

42 Therefore, it is a matter for the national authorities and courts to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent or abusive ends (see, to that effect, *Fini H*, paragraphs 33 and 34; *Kittel and Recolta Recycling*, paragraph 55; and Case C-414/10 *Véleclair* [2012] ECR, paragraph 32).

43 However, as regards the case in the main proceedings, it is apparent from the order for reference that it is not disputed that the applicant in the main proceedings, who wishes to exercise the right to deduct, is a taxable person for the purposes of Article 9(1) of Directive 2006/112 and that the supplies of services relied on to support that right were subsequently used by that applicant as outputs for the purpose of his own taxable transactions.

44 Moreover, it is apparent from the order for reference that the questions referred are based on the premisses, first, that the transaction relied on as a basis for the right to deduct was carried out, as is to be inferred from the corresponding invoice, and, second, that that invoice includes all

the information required by Directive 2006/112, with the result that the substantive and formal conditions provided for by that directive for the creation and exercise of the right to deduct are fulfilled. It is necessary to point out, in particular, that the order for reference does not indicate that the applicant in the main proceedings himself acted unlawfully by, for instance, filing false returns or issuing improper invoices.

45 In those circumstances, a taxable person can be refused the benefit of the right to deduct only on the basis of the case-law resulting from paragraphs 56 to 61 of *Kittel and Recolta Recycling* , according to which it must be established, on the basis of objective factors, that the taxable person to whom were supplied the goods or services which served as the basis on which to substantiate the right to deduct, knew, or ought to have known, that that transaction was connected with fraud previously committed by the supplier or another trader at an earlier stage in the transaction.

46 A taxable person who knew, or ought to have known, that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of Directive 2006/112, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods or the use of the services in the context of the taxable transactions subsequently carried out by him (see *Kittel and Recolta Recycling*, paragraph 56).

47 By contrast, it is incompatible with the rules governing the right to deduct under that directive, as noted in paragraphs 37 to 40 of the present judgment, to impose a penalty, in the form of refusing that right to a taxable person who did not know, and could not have known, that the transaction concerned was connected with fraud committed by the supplier, or that another transaction forming part of the chain of supply prior or subsequent to that transaction carried out by the taxable person was vitiated by VAT fraud (see, to that effect, *Optigen and Others*, paragraphs 52 and 55, and *Kittel and Recolta Recycling*, paragraphs 45, 46 and 60).

48 The establishment of a system of strict liability would go beyond what is necessary to preserve the public exchequer’s rights (see, to that effect, Case C-384/04 *Federation of Technological Industries and Others* [2006] ECR I-4191, paragraph 32, and Case C-271/06 *Netto Supermarkt* [2008] ECR I-771, paragraph 23).

49 Given that the refusal of the right to deduct in accordance with paragraph 45 of the present judgment is an exception to the application of the fundamental principle constituted by that right, it is for the tax authority to establish, to the requisite legal standard, the objective evidence which allows the conclusion to be drawn that the taxable person knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with fraud committed by the supplier or by another trader acting earlier in the chain of supply.

50 In the light of the foregoing considerations, the answer to the questions referred in Case C-142/11 is that Articles 167, 168(a), 178(a), 220(1) and 226 of Directive 2006/112 must be interpreted as precluding a national practice whereby the tax authority refuses a taxable person the right to deduct, from the VAT which he is liable to pay, the amount of the VAT due or paid in respect of the services supplied to him, on the ground that the issuer of the invoice relating to those services, or one of his suppliers, acted improperly, without that authority establishing, on the basis of objective evidence, that the taxable person concerned knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with fraud committed by the issuer of the invoice or by another trader acting earlier in the chain of supply.

The questions referred in Case C-80/11

51 By these questions, which it is appropriate to examine together, the national court asks, in

essence, whether Articles 167, 168(a), 178(a) and 273 of Directive 2006/112 must be interpreted as precluding a national practice whereby the tax authority refuses the right to deduct on the ground that the taxable person did not satisfy himself that the issuer of the invoice relating to the goods in respect of which the exercise of the right to deduct is sought had the status of a taxable person, that he was in possession of the goods in question and was in a position to supply them, and that he had satisfied his obligations as regards declaration and payment of VAT, or on the ground that that taxable person is not in possession of, in addition to that invoice, other documents capable of demonstrating that those conditions were fulfilled.

52 In that regard, it is apparent from the order for reference and, in particular, the first question, that the questions referred in Case C-80/11 are, like those referred in Case C-142/11, based on the premiss that the substantive and formal conditions provided for by Directive 2006/112 for the exercise of the right to deduct are fulfilled, in particular the condition which requires the taxable person to be in possession of an invoice which confirms that the goods were actually supplied and which complies with the requirements of that directive. Accordingly, in the light of the response given in paragraph 50 of the present judgment, which also applies in the case of the supply of goods, the right to deduct can be refused only where it is established, on the basis of objective evidence, that the taxable person concerned knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with fraud committed by the issuer of the invoice or by another trader acting earlier in the chain of supply.

53 According to the Court's case-law, traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT (see *Kittel and Recolta Recycling*, paragraph 51).

54 On the other hand, it is not contrary to European Union law to require a trader to take every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion (see, to that effect, Case C-409/04 *Teleos and Others* [2007] ECR I-7797, paragraphs 65 and 68; *Netto Supermarkt*, paragraph 24; and Case C-499/10 *Vlaamse Oliemaatschappij* [2011] ECR I-14191, paragraph 25).

55 Moreover, in accordance with the first paragraph of Article 273 of Directive 2006/112, Member States may impose obligations, other than those provided for by that directive, if they consider such obligations necessary to ensure the correct levying and collection of VAT and to prevent evasion.

56 However, even though that provision gives the Member States a margin of discretion (see Case C-588/10 *Kraft Foods Polska* [2012] ECR, paragraph 23), that option may not be relied upon, according to the second paragraph of that article, in order to impose additional invoicing obligations over and above those laid down in Chapter 3, headed 'Invoicing', of Title XI, headed 'Obligations of taxable persons and certain non-taxable persons', of that directive and, in particular, Article 226 thereof.

57 Furthermore, the measures which the Member States may adopt under Article 273 of Directive 2006/112, in order to ensure the correct levying and collection of the tax and to prevent evasion, must not go further than is necessary to attain such objectives. Therefore, they cannot be used in such a way that they would have the effect of systematically undermining the right to deduct VAT and, consequently, the neutrality of VAT, which is a fundamental principle of the common system of VAT (see, to that effect, inter alia, *Gabalfrisa and Others*, paragraph 52; *Halifax and Others*, paragraph 92; Case C-385/09 *Nidera Handelscompagnie* [2010] ECR I-10385, paragraph 49; and *Dankowski*, paragraph 37).

58 As regards the national measures at issue in the case in the main proceedings, it must be noted that the Law on VAT does not prescribe specific obligations, but merely provides, in Paragraph 44(5), that the taxation rights of the taxable person indicated as the purchaser in the invoice may not be called into question, provided that that person has acted with due diligence in respect of the chargeable event, bearing in mind the circumstances under which the goods were supplied or the services performed.

59 In those circumstances, it follows from the case-law referred to in paragraphs 53 and 54 of the present judgment that determination of the measures which may, in a particular case, reasonably be required of a taxable person wishing to exercise the right to deduct VAT in order to satisfy himself that his transactions are not connected with fraud committed by a trader at an earlier stage of a transaction depends essentially on the circumstances of that particular case.

60 It is true that, when there are indications pointing to an infringement or fraud, a reasonable trader could, depending on the circumstances of the case, be obliged to make enquiries about another trader from whom he intends to purchase goods or services in order to ascertain the latter’s trustworthiness.

61 However, the tax authority cannot, as a general rule, require the taxable person wishing to exercise the right to deduct VAT, first, to ensure that the issuer of the invoice relating to the goods and services in respect of which the exercise of that right to deduct is sought has the capacity of a taxable person, that he was in possession of the goods at issue and was in a position to supply them and that he has satisfied his obligations as regards declaration and payment of VAT, in order to be satisfied that there are no irregularities or fraud at the level of the traders operating at an earlier stage of the transaction or, second, to be in possession of documents in that regard.

62 It is, in principle, for the tax authorities to carry out the necessary inspections of taxable persons in order to detect VAT irregularities and fraud as well as to impose penalties on the taxable person who has committed those irregularities or fraud.

63 According to the case-law of the Court, Member States are required to check taxable persons’ returns, accounts and other relevant documents (see Case C-132/06 *Commission* v *Italy* [2008] ECR I-5457, paragraph 37, and Case C-188/09 *Profaktor Kulesza, Frankowski, Jó?wiak, Or?owski* [2010] ECR I-7639, paragraph 21).

64 To that end, Directive 2006/112 imposes, in particular in Article 242, an obligation on every taxable person to keep accounts in sufficient detail for VAT to be applied and its application checked by the tax authorities. In order to facilitate the performance of that task, Articles 245 and 249 of that directive provide for the right of the competent authorities to access the invoices which the taxable person is obliged to store under Article 244 of that directive.

65 It follows that, by imposing on taxable persons, in view of the risk that the right to deduct may be refused, the measures listed in paragraph 61 of the present judgment, the tax authority

would, contrary to those provisions, be transferring its own investigative tasks to taxable persons.

66 In the light of the foregoing considerations, the answer to the questions referred in Case C-80/11 is that Articles 167, 168(a), 178(a) and 273 of Directive 2006/112 must be interpreted as precluding a national practice whereby the tax authority refuses the right to deduct on the ground that the taxable person did not satisfy himself that the issuer of the invoice relating to the goods in respect of which the exercise of the right to deduct is sought had the status of a taxable person, that he was in possession of the goods in question and was in a position to supply them, and that he had satisfied his obligations as regards declaration and payment of VAT, or on the ground that, in addition to that invoice, that taxable person is not in possession of other documents capable of demonstrating that those conditions were fulfilled, although the substantive and formal conditions laid down by Directive 2006/112 for exercising the right to deduct were fulfilled and the taxable person is not in possession of any material justifying the suspicion that irregularities or fraud have been committed within that invoice issuer's sphere of activity.

Costs

67 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national courts, the decisions on costs are a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Articles 167, 168(a), 178(a), 220(1) and 226 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a national practice whereby the tax authority refuses a taxable person the right to deduct, from the value added tax which he is liable to pay, the amount of the value added tax due or paid in respect of the services supplied to him, on the ground that the issuer of the invoice relating to those services, or one of his suppliers, acted improperly, without that authority establishing, on the basis of objective evidence, that the taxable person concerned knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with fraud committed by the issuer of the invoice or by another trader acting earlier in the chain of supply.**

2. **Articles 167, 168(a), 178(a) and 273 of Directive 2006/112 must be interpreted as precluding a national practice whereby the tax authority refuses the right to deduct on the ground that the taxable person did not satisfy himself that the issuer of the invoice relating to the goods in respect of which the exercise of the right to deduct is sought had the status of a taxable person, that he was in possession of the goods in question and was in a position to supply them, and that he had satisfied his obligations as regards declaration and payment of value added tax, or on the ground that, in addition to that invoice, that taxable person is not in possession of other documents capable of demonstrating that those conditions were fulfilled, although the substantive and formal conditions laid down by Directive 2006/112 for exercising the right to deduct were fulfilled and the taxable person is not in possession of any material justifying the suspicion that irregularities or fraud have been committed within that invoice issuer's sphere of activity.**

[Signatures]

* Language of the cases: Hungarian.