

JUDGMENT OF THE COURT (Second Chamber)

14 March 2013 (*)

(VAT — Directive 2006/112/EC — Articles 213, 214 and 273 — Identification of taxable persons subject to VAT — Refusal to assign a VAT identification number on the ground that the taxable person is not in possession of the material, technical and financial resources to carry out the declared economic activity — Legality — Countering tax evasion — Principle of proportionality)

In Case C-527/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākās tiesas Senāts (Latvia), made by decision of 12 October 2011, received at the Court on 18 October 2011, in the proceedings

Valsts ieņēmumu dienests

v

Abessio SIA,

THE COURT (Second Chamber),

composed of A. Rosas, acting as President of the Second Chamber, U. Lõhmus (Rapporteur), A. Ó Caoimh, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Valsts ieņēmumu dienests, by T. Kravalis, acting as Agent,
- the Latvian Government, by I. Kalniņš and I. Žesterova, acting as Agents,
- the Estonian Government, by M. Linntam, acting as Agent,
- the European Commission, by C. Soulay and E. Kalniņš, 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 Articles 213, 214 and 273 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 request has been submitted in the course of proceedings between the Valsts ieņēmumu dienests (Latvian tax authority; 'the VID') and Ablessio SIA ('Ablessio') concerning the refusal to register Ablessio in the register of taxable persons subject to value added tax ('VAT').

Legal context

Directive 2006/112

3 The concepts of 'taxable person' and 'economic activity' are defined in Article 9(1) of Directive 2006/112 as follows:

"Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.'

4 Article 213(1) of Directive 2006/112 provides:

'Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

Member States shall allow, and may require, the statement to be made by electronic means, in accordance with conditions which they lay down.'

5 Under Article 214 of Directive 2006/112:

'1. Member States shall take the measures necessary to ensure that the following persons are identified by means of an individual number:

(a) every taxable person, with the exception of those referred to in Article 9(2), who within their respective territory carries out supplies of goods or services in respect of which VAT is deductible, other than supplies of goods or services in respect of which VAT is payable solely by the customer or the person for whom the goods or services are intended, in accordance with Articles 194 to 197 and Article 199;

(b) every taxable person, or non-taxable legal person, who makes intra-Community acquisitions of goods subject to VAT pursuant to Article 2(1)(b) and every taxable person, or non-taxable legal person, who exercises the option under Article 3(3) of making their intra-Community acquisitions subject to VAT;

...

2. Member States need not identify certain taxable persons who carry out transactions on an occasional basis, as referred to in Article 12.'

6 Article 273, first paragraph, of Directive 2006/112 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.'

Latvian law

7 Article 3(1-1), second paragraph, of the Law on Value Added Tax (Likums Par pievienotās vērtības nodokli, *Latvijas Vēstnesis*, 1995, no 49) in the version applicable to the facts of the dispute in the main proceedings ('the Law on VAT'), provides:

'The VID is entitled to refuse to enter a person in the register of taxable persons subject to VAT where:

- (1) that person cannot be reached at the legal address or declared place of residence indicated by him, or
- (2) after a request from the VID, that person does not submit information or submits false information regarding his material, technical and financial capacity to carry out the declared economic activity.'

8 According to Article 3(5) of that law:

'If the total value of the sales of goods and services subject to VAT effected by a natural or legal person, or by a group of such persons or their representative on the basis of a contract or agreement, during the previous 12 months has not reached or exceeded LVL 10 000, that person, that group or their representatives shall be entitled not to be included in the register of taxable persons for VAT purposes maintained by the VID. This rule shall also apply to institutions financed by the State budget. Persons who make use of that right must, within thirty days from the date on which that amount is reached or exceeded, have themselves entered in that register.'

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

9 Ablessio, a Latvian company with limited liability, applied to the VID to be entered on the register of taxable persons subject to VAT. By decision dated 15 November 2007, confirmed following an objection by a decision dated 27 November 2007, the VID refused registration, stating that this company did not have the material, technical and financial capacity to carry out the declared economic activity, namely providing construction services.

10 It can be seen from the order for reference that, for the purposes of adopting those refusal decisions, the VID relied upon the findings, first, that Ablessio had no fixed assets, and no agreement had been concluded to lease such fixed assets. Next, an occupational lease had been concluded to rent an office with a non-residential area of only 4m². Finally, the company was not registered in the Register of Construction Companies, it had not carried out any actual commercial activities since it was established, and the company's only employee was the apparently unremunerated chairman of the board of directors.

11 Ablessio made an application to set aside those decisions refusing registration in the register of taxable persons subject to VAT before the administratīvā rajona tiesa (District Administrative Court), which granted the application by a decision dated 20 October 2009 and ordered the VID to enter the company in the register. That court held that Ablessio had provided the VID with the information concerning its capacity to carry on the economic activity declared and that the accuracy of that information was not contested. Therefore, in the opinion of that court, the conditions provided for by law enabling the VID to refuse to enter an economic operator in that register had not been fulfilled.

12 Ruling on the appeal brought by the VID, the Administratīvā apgabaltiesa (Regional

Administrative Court), by a judgment dated 13 December 2010, upheld the decision of the court of first instance and found also that the Law on VAT does not authorise the VID to assess whether a person who wishes to be entered in the register of taxable persons subject to VAT is capable of carrying out an economic activity. In that regard, it held that it is irrelevant that that person has already applied for and obtained the registration of several undertakings which immediately after that registration were transferred to other persons who did not possess sufficient revenue to provide the share capital, since the Law on VAT does not provide that such circumstances constitute a ground for refusing to register a person in the register. In order to avoid any potentially unlawful act by the taxable person in the payment of VAT, the legal procedure provides that the VID is required to carry out inspections of the taxable person, and if it finds any infringements of national provisions, the VID must calculate an additional tax and penalties.

13 The VID brought an appeal on a point of law before the referring court against the decision of the Administrative Tribunal of Pau maintaining that the latter court committed an error of law in its interpretation of Article 3(1-1), second paragraph, of the Law on VAT. In the opinion of the VID, that provision obliges it to verify whether a person is capable of carrying on the economic activity declared.

14 Referring to the judgment in Case C-385/09 *Nidera Handelscompagnie* [2010] ECR I-10385, the national court expressed doubts as to the interpretation, in particular, of Articles 213, 214 and 273 of Directive 2006/112.

15 In those circumstances, the *Augstākā tiesa* decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Is Directive 2006/112 ... to be interpreted as prohibiting refusal of the individual registration number that identifies a taxable person, on the basis that the holder of the taxable person’s shares previously obtained on various occasions an individual number for other undertakings which did not carry out any real economic activity, and the shares of which were transferred by the holder to other persons immediately after obtaining the individual number?

2. Is Article 214, in conjunction with Article 273, of Directive [2006/112] to be interpreted as permitting the tax authority, before assigning the individual number, to verify the capacity of the taxable person to carry out the activity that is subject to tax, where this verification is intended to ensure correct collection of the tax and prevent tax evasion?’

The questions referred

16 By its questions, which should be dealt with together, the referring court essentially asks whether Articles 213, 214 and 273 of Directive 2006/112 must be interpreted as meaning that, in the interests of ensuring the correct collection of VAT and preventing evasion, the tax authority of a Member State may not refuse to assign a VAT identification number to a company solely on the ground that, in the opinion of that authority, the company does not have at its disposal the material, technical and financial resources to carry out the economic activity declared, and that the owner of the shares in that company has already obtained, on various occasions, such an identification number for companies which never carried out any real economic activity, and the shares of which were transferred shortly after obtaining the individual number.

17 It should be recalled that pursuant to Article 213(1), first paragraph, of Directive 2006/112 every taxable person is obliged to state when his activity as a taxable person commences, changes or ceases. Article 214(1) of Directive 2006/112 requires Member States to take the measures necessary to ensure that taxable persons are identified by means of an individual number.

18 The essential aim of identifying taxable persons, as provided for under Article 214 of Directive 2006/112, is to ensure that the VAT system operates properly (see, to that effect, Case C-438/09 *Dankowski* [2010] ECR I-14009, paragraph 33).

19 In that regard, the Court has already held that the allocation of a VAT identification number provides proof of the tax status of the taxable person for the purposes of applying VAT and simplifies the inspection of taxable persons with a view to ensuring the correct collection of the tax. Under the transitional arrangements for tax applicable to trade within the European Union, the identification of taxable persons subject to VAT by means of an individual number also facilitates the determination of the Member State in which the final consumption of the goods delivered takes place (see, to that effect, Case C-273/11 *Mecsek-Gabona* [2012] ECR, paragraphs 57 and 60, and Case C-587/10 *VSTR* [2012] ECR, paragraph 51).

20 In addition, the VAT identification number is an important piece of evidence of the operations carried out. Indeed, Directive 2006/112 requires, in a number of provisions relating, in particular, to invoicing, declarations and summary statements, that this identification number of the taxable person or the recipient of the goods or services be referred to in those documents.

21 The referring court's questions should be answered in light of those considerations.

22 It must be observed that, although Article 214 of Directive 2006/112 lists the categories of persons who must be identified by an individual number, that provision does not stipulate the conditions which may be placed on the issuing of the VAT identification number. Indeed, it follows from the wording of that article and Article 213 of Directive 2006/112 that Member States have a certain discretion when they adopt measures to ensure the identification of taxable persons for the purposes of VAT.

23 However, that discretion cannot be unrestricted. Although it is possible for a Member State to refuse to assign an individual number to a taxable person, it cannot do so without legitimate grounds.

24 Furthermore, it follows from the concept of 'taxable person', as defined in Article 9(1) of Directive 2006/112, that it covers any person who, independently, and irrespective of the place, carries out an economic activity, whatever the purpose or results of that activity.

25 According to the case-law of the Court, that concept should be given a broad interpretation. Any person with the intention, as confirmed by objective elements, of independently starting an economic activity, and who incurs the initial investment expenditure for those purposes must be regarded as a taxable person (see, to that effect, Case C-400/98 *Breitsohl* [2000] ECR I-4321, paragraph 34, and Case C-280/10 *Polski Trawertyn* [2012] ECR, paragraph 30).

26 It follows from this case-law and from the wording of Article 213(1) of Directive 2006/112 that, not only persons who already carry out an economic activity are considered to be taxable persons eligible to apply for a VAT identification number, but also those who plan to start such an activity and who incur the initial investment expenditure for that purpose. These persons may therefore not be in a position to prove, at this early stage of their economic activity, that they

already have the material, technical and financial resources to carry out such an activity.

27 Consequently, Directive 2006/112, and particularly Articles 213 and 214, preclude the tax authority of a Member State from refusing to assign a VAT identification number to applicants solely on the ground that they are not in a position to show that they have at their disposal the material, technical and financial resources to carry out the economic activity declared at the time of submitting their application for registration on the register of taxable persons.

28 However, according to settled case-law of the Court, Member States have a legitimate interest in taking appropriate steps to protect their financial interests, and the prevention of tax evasion, avoidance and abuse is an objective recognised and encouraged by Directive 2006/112 (see, in particular, Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 71; Case C-285/09 *R.* [2010] ECR I-12605, paragraph 36; and Case C-525/11 *Mednis* [2012] ECR, paragraph 31).

29 Furthermore, Member States are obliged to guarantee the accuracy of the entries in the register of taxable persons to ensure that the VAT system operates properly. It therefore falls to the competent national authority to check an applicant's status as a taxable person before it assigns that person a VAT identification number (see *Mecsek-Gabona*, paragraph 63).

30 Therefore, Member States can, in accordance with Article 273, first paragraph, of Directive 2006/112, legitimately take measures that are necessary to prevent the misuse of identification numbers, in particular by undertakings whose activity, and consequently their status as taxable persons, is purely fictitious. However, these measures must not go beyond what is necessary for the correct collection of the tax and the prevention of evasion, and they must not systematically undermine the right to deduct VAT, and hence the neutrality of that tax (see, to that effect, Case C-146/05 *Collée* [2007] ECR I-7861, paragraph 26; *Nidera Handelscompagnie*, paragraph 49; *Dankowski*, paragraph 37; and *VSTR*, paragraph 44).

31 In that regard, it must be noted that the control measures, as laid down by the Law on VAT, cannot restrict the right of taxable persons to deduct VAT due or paid on investment expenditure incurred for the purposes of operations they plan to carry out and which confer a right of deduction.

32 It should be recalled that, under settled case-law of the Court, the identification as provided for under Article 214 of Directive 2006/112 and the obligations stipulated under Article 213 are only formal requirements for the purposes of control, and they cannot undermine, inter alia, the right of deduction or the right of exemption from VAT for an intra-Community supply, where the substantive conditions which give rise to these rights are satisfied (see, to that effect, *Nidera Handelscompagnie*, paragraph 50; Case C-263/11 *R?dlihs* [2012] ECR, paragraph 48; and *Mecsek-Gabona*, paragraph 60).

33 It follows from this case-law that the registration of a taxable person in the register of taxable persons subject to VAT is a formal requirement, such that a taxable person cannot be prevented from exercising his right of deduction on the ground that he had not been identified as a taxable person for VAT purposes before using the goods purchased in the context of his taxed activity (see, to that effect, *Nidera Handelscompagnie*, paragraph 51, and *Dankowski*, paragraphs 33, 34 and 36). Therefore, the refusal to assign a VAT identification number cannot, in principle, have any effect on the taxable person's right to deduct input VAT if the material conditions giving rise to that right have been fulfilled.

34 In order to be considered proportionate to the objective of preventing evasion, a refusal to identify a taxable person by an individual number must be based on sound evidence giving

objective grounds for considering that it is probable that the VAT identification number assigned to that taxable person will be used fraudulently. Such a decision must be based on an overall assessment of all the circumstances of the case and of the evidence gathered when checking the information provided by the undertaking concerned.

35 It is for the referring court – which alone has jurisdiction both to interpret the national law and to find and assess the facts in the case before it and, in particular, the way in which that law is applied by the tax authority (see, to that effect, *Mednis*, paragraph 33 and the case-law cited) – to determine whether the national measures are compatible with European Union law, in particular the principle of proportionality. The Court of Justice is competent only to provide that court with the criteria for the interpretation which may enable it to make such a determination as to compatibility (see, to that effect, Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 19 and Case C-188/09 *Profaktor Kulesza, Frankowski, Jó?wiak, Or?owski* [2010] ECR I-7639, paragraph 30).

36 In the circumstances of the case in the main proceedings, it must be noted that the fact that a taxable person is not in possession of the material, technical and financial resources to carry out the declared economic activity is not, in itself, sufficient to demonstrate that it is probable that the latter intends to commit tax evasion. However, it cannot be excluded that circumstances of this nature, corroborated by the presence of other objective elements leading to the suspicion of the taxable person's fraudulent intentions, may constitute factors that have to be taken into account as part of the overall assessment of the risk of evasion.

37 Similarly, Directive 2006/112 makes no provision for a limitation on the number of applications for individual VAT identification numbers that may be made by the same person acting on behalf of different legal entities. Nor does the directive permit the inference that the transfer of control of these legal entities after they have been identified for VAT purposes constitutes an illegal activity. However, such circumstances can also be taken into account as part of an overall assessment of the risk of evasion.

38 It is for the referring court to examine whether, having regard to all the circumstances of the case, the tax authority has established to the requisite legal standard the existence of sound evidence from which it may be concluded that the application for registration in the register of taxable persons subject to VAT by Ablessio might result in the misuse of the identification number or other VAT fraud.

39 In light of the foregoing, the answer to the questions referred is that Articles 213, 214 and 273 of Directive 2006/112 must be interpreted as meaning that the tax authority of a Member State may not refuse to assign a VAT identification number to a company solely on the ground that, in the opinion of that authority, the company does not have at its disposal the material, technical and financial resources to carry out the economic activity declared, and that the owner of the shares in that company has already obtained, on various occasions, such an identification number for companies which never carried out any real economic activity, and the shares of which were transferred shortly after obtaining the individual number, where the tax authority concerned has not established, on the basis of objective factors, that there is sound evidence leading to the suspicion that the VAT identification number assigned will be used fraudulently. It is for the referring court to assess whether that tax authority provided sound evidence of the existence of a risk of tax evasion in the case in the main proceedings.

Costs

40 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 (Second Chamber) hereby rules:

Articles 213, 214 and 273 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 tax authority of a Member State may not refuse to assign a value added tax identification number to a company solely on the ground that, in the opinion of that authority, the company does not have at its disposal the material, technical and financial resources to carry out the economic activity declared, and that the owner of the shares in that company has already obtained, on various occasions, such an identification number for companies which never carried out any real economic activity, and the shares of which were transferred immediately after obtaining the individual number, where the tax authority concerned has not established, on the basis of objective factors, that there is sound evidence leading to the suspicion that the value added tax identification number assigned will be used fraudulently. It is for the referring court to assess whether that tax authority provided serious evidence of the existence of a risk of tax evasion in the case in the main proceedings.

[Signatures]

*Language of the case: Latvian.