JUDGMENT OF THE COURT (First Chamber)

27 June 2013 (*)

(VAT – Directive 2006/112/EC – Articles 44 and 47 – Place where taxable transactions are deemed to be carried out – Place of supply for tax purposes – Concept of ‘supply of services connected with immovable property’ – Complex cross-border service relating to the storage of goods)

In Case C-155/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny S?d Administracyjny (Poland), made by decision of 8 February 2012, received at the Court on 30 March 2012, in the proceedings

Minister Finansów

v

RR Donnelley Global Turnkey Solutions Poland sp. z o.o.,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Berger, A. Borg Barthet, E. Levits and J.-J. Kasel (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– RR Donnelley Global Turnkey Solutions Poland sp. z o.o., by W. Varga, radca prawny,

– the Polish Government, by B. Majczyna and M. Szpunar, acting as Agents,

– the Greek Government, by K. Paraskevopoulou and M. Germani, acting as Agents,

– the European Commission, by J. Hottiaux and C. Soulay, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 January 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 44 and 47 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2008/8/EC of 12 February 2008 (OJ 2008 L 44, p. 11) ('the VAT Directive').

2 The request has been made in proceedings between the Minister Finansów (Minister for Finance) and RR Donnelley Global Turnkey Solutions Poland sp. z o.o. ('RR'), a company incorporated under Polish law and subject to value added tax ('VAT'), concerning the determination, for purposes of the imposition of that tax, of the place where a supply of services relating to the storage of goods is deemed to be carried out.

Legal context

European Union law

3 Article 44 of the VAT Directive provides:

'The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides.'

4 Article 47 of that directive provides:

'The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located.'

Polish law

5 Article 5(1)(1) of the Law on value added tax (ustawa o podatku od towarów i us?ug) of 11 March 2004 (Dz. U. n° 54, position 535), in the version applicable to the main proceedings ('the Law on VAT') provides that the supply of goods and the provision of services within Polish territory are subject to VAT.

6 Article 8(1) and (4) of the Law on VAT provides:

'1. The "provision of services" referred to in Article 5(1)(1) shall mean any provision to a natural person, legal person or organisational unit without legal personality which does not constitute a supply of goods within the meaning of Article 7, including:

(1) the assignment of intangible or legal assets, regardless of the form in which the legal transaction is effected;

(2) the obligation to refrain from an act, or to tolerate an act or situation;

(3) the performance of services in pursuance of an order made by or in the name of a public

authority or in pursuance of the law.

…

4. For the purpose of determining the place where services are provided, services shall be identified by means of statistical classifications where the provisions of this Law or the implementing provisions issued pursuant thereto provide statistical symbols for those services.'

7 In accordance with Article 28b(1) of the Law on VAT, the place where a service is provided, in the case of the provision of a service to a taxable person, is the place where the taxable person who is the customer has his established business or permanent address, subject to Article 28b(2) to (4) and Articles 28e, 28f(1), 28g(1), 28i, 28j and 28n.

8 Under Article 28b(2) of the Law on VAT, where the services are provided in relation to the taxable person's fixed establishment which is located in a place other than his established business or permanent address, the place where those services are supplied is the place of that fixed establishment.

9 Article 28e of the Law on VAT reads as follows:

'The place of supply of services connected with immovable property, including the services supplied by experts and estate agents, the provision of accommodation in hotels or facilities with a similar function, such as holiday camps or sites developed for use as camping sites, the operation and use of immovable property and services for the preparation and coordination of construction work, such as, for example, the services of architects and on-site supervision, shall be the place where the immovable property is located.'

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

10 As part of its business, RR provides to traders, who are subject to VAT and established in Member States other than the Republic of Poland, a complex service relating to the storage of goods. That service covers, inter alia, admission of the goods to a warehouse, placing them on the appropriate storage shelves, storing those goods, packaging the goods for customers and issuing, unloading and loading the goods. In addition, for certain contractual partners which are suppliers of goods to computer companies, the service at issue also includes the repackaging, into individual sets, of materials supplied in collective packaging. The provision of storage space is only one of several elements of the logistics process which RR manages. In addition, for the purpose of the service at issue, RR uses its own employees and packaging, the costs of which form an element of the consideration for the service. RR's contractual partners which order the storage services do not have established businesses in Poland and do not have a fixed establishment within Polish territory.

11 On 25 March 2010, RR submitted an application for individual interpretation concerning the determination of the place of the supply of a complex storage service for the purpose of calculating VAT. According to RR, the place where a supply of services of the kind which it provides is carried out must be the place where the service recipient is established. Consequently, RR argues, the services which it offers should not be subject to VAT in Poland. More specifically, the complex service relating to the storage of goods cannot be regarded as a service connected with immovable property as the intention of the parties is not to grant the recipients of the service at issue the right to use the storage area, but that service merely involves keeping the goods in an unaltered state and providing all additional services which are related to such a service.

12 In its individual interpretation, issued on 8 June 2010, the Polish tax authority, represented

by the Minister Finansów, stated, however, that the services relating to the storage of goods were in the nature of services connected with immovable property and therefore came within Article 28e of the Law on VAT. In those circumstances, the place where those services were supplied was the place where the immovable property used for warehousing purposes was located.

13 RR brought an action against that individual interpretation, arguing that the interpretation of Article 28e of the Law on VAT supported by the Minister Finansów departed from the wording and interpretation of Article 47 of the VAT Directive, that it was contrary to the principle of consistency of European Union law, and that it called into question the uniform application of that law in the Member States. In accordance with the provisions of that directive, the supplies of services connected with immovable property were, RR submitted, services which concerned such immovable property. That, it stated, was precisely not the case with regard to the supply of services at issue in the main proceedings.

14 By judgment of 25 November 2010, the Wojewódzki S?d Administracyjny w ?odzi (Regional Administrative Court, ?ód?) upheld that action, finding that the services provided by RR did not constitute a supply of services connected with immovable property. In particular, that court took the view that the services in question could not be categorised as services consisting in 'the granting of rights to use immovable property' in so far as the subject matter of the contracts concluded between RR and its contractual partners was the holding and active management of goods stored in RR's warehouses. Customers were given no right to use the immovable property in any manner whatsoever. The conclusive element of a supply of services such as that at issue in the main proceedings was, that court found, the handling of the goods in such a way as to enable the customer to market his goods in the most effective manner possible. In addition, that supply of services did not have a 'sufficiently direct connection with immovable property' within the meaning of the Court's case-law (Case C-166/05 *Heger* [2006] ECR I-7749), and therefore could not come under Article 47 of the VAT Directive. Consequently, when the services at issue are supplied to customers established outside Polish territory, they should not be subject to tax in Poland.

15 In support of the appeal on a point of law which he brought against that judgment before the Naczelny S?d Administracyjny (Supreme Administrative Court), the Minister Finansów argued that, in the present case, the storage service is the principal and predominant service, as the other services offered by RR arise from the nature of the principal service. The close connection between that service and the immovable property specifically designated as a warehouse is, he argues, undeniable. Consequently, the place where that service is taxed must be determined in accordance with Article 28e of the Law on VAT and is therefore located in Poland.

16 According to the referring court, it follows from the judgments in *Heger*, Case C-37/08 *RCI Europe* [2009] ECR I-7533, and Case C-530/09 *Inter-Mark Group* [2011] ECR I-10675 that, in order to determine whether a supply of services is connected with immovable property for the purposes of Article 47 of the VAT Directive, a number of conditions have to be satisfied. In the present case, while there is a certain connection between the supply of services at issue and immovable property, that link is merely secondary in nature.

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

'– Are the provisions of Articles 44 and 47 of [the VAT Directive] to be interpreted as meaning that complex services relating to the storage of goods, which comprise admission of the goods to the warehouse, placing the goods on the appropriate storage shelves, storing the goods for the customer, issuing the goods, unloading and loading and, in the case of certain customers, repackaging materials supplied in collective packaging into individual sets, constitute services connected with immovable property which are to be taxed, in accordance with Article 47 of [the

VAT Directive], at the place where the immovable property is located?;

– Alternatively, should it be accepted that the services in question are to be taxed, pursuant to Article 44 of [the VAT Directive], at the place where the customer for whom the services are supplied has established his business on a permanent basis or has a fixed establishment or, in the absence of such a place, at the place where he has his permanent address or usually resides?'

The question referred for a preliminary ruling

18 By its question, the referring court asks, in essence, whether Article 47 of the VAT Directive must be interpreted as meaning that a supply of complex storage services, which comprise admission of the goods to a warehouse, placing them on the appropriate storage shelves, storing the goods, packaging them, issuing them, unloading and loading them and, in the case of certain customers, repackaging, into individual sets, materials supplied in collective packaging, constitutes a supply of services connected with immovable property within the terms of that article.

19 In order to provide a useful answer to the referring court, and having regard to the fact that the transaction covered by the question referred for a preliminary ruling consists of several elements, it is necessary to examine, in the first place, whether that transaction is to be regarded as consisting of a single supply or of several distinct and independent supplies which must be assessed separately from the point of view of VAT.

20 According to the Court's case-law, in certain circumstances several formally distinct services, which could be supplied separately and thus give rise, in turn, to taxation or exemption, must be considered to be a single transaction when they are not independent (Case C-425/06 *Part Service* [2008] ECR I-897, paragraph 51, and Case C-392/11 *Field Fisher Waterhouse* [2012] ECR, paragraph 15).

21 In this context, the Court has held that a supply must be regarded as a single supply where two or more elements or acts supplied by the taxable person are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (see, to that effect, Case C-41/04 *Levob Verzekeringen and OV Bank* [2005] ECR I-9433, paragraph 22, and *Field Fisher Waterhouse*, paragraph 16).

22 That is also the case where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied (see, to that effect, Case C-349/96 *CPP* [1999] ECR I-973, paragraph 30; Joined Cases C-497/09, C-499/09, C-501/09 and C-502/09 *Bog and Others* [2011] ECR I-1457, paragraph 54; and *Field Fisher Waterhouse*, paragraph 17).

23 Although it is for the national court to determine whether the taxable person supplies a single service in a particular case and to make all definitive findings of fact in that regard, the Court may, however, provide it with any guidance as to interpretation that will be helpful to it in disposing of the case (see, to that effect, *Levob Verzekeringen and OV Bank*, paragraph 23, and Case C-334/10 *X* [2012] ECR, paragraph 24).

24 In this regard, it should be noted, as the Advocate General did at points 21 to 23 of her Opinion, that it is apparent from the file before the Court that, in the case in the main proceedings, the storage of the goods must, in principle, be considered to constitute the principal supply and that the reception, placement, issuing, unloading and loading of the goods amount to only ancillary supplies. For customers, these latter supplies do not, in principle, constitute an end in themselves,

but are transactions which enable those customers better to enjoy the principal service.

25 However, with regard to the repackaging of the goods supplied in packaging in order to create individual sets, it should be added that this service, which is provided only to certain customers, must be considered to constitute an independent principal supply in all cases in which that repackaging is not absolutely necessary to ensure better storage of the goods at issue.

26 Having regard to the fact that it is not apparent from the file before the Court that, by its question, the referring court has referred to this second scenario, for the remainder of the reasoning it is necessary to take the view that the complex storage service at issue in the main proceedings constitutes one single transaction, the principal service of which comprises the storage of goods.

27 In those circumstances, it is necessary, secondly, to determine the location where that single transaction is deemed to be carried out.

28 In this regard, it must be stated that the VAT Directive, like 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) ('the Sixth Directive'), which it replaced, contains in its Title V, which deals with the place of taxable transactions, a Chapter 3 relating to the place of supply of services, sections 2 and 3 of which set out, as their respective headings indicate, both general rules for determining the place of taxation of such a service and particular provisions relating to the supply of specific services.

29 Accordingly, before being able to decide whether, in a given situation, a specific service supplied comes within Articles 44 and 45 of the VAT Directive, which set out general rules, it is necessary to deal with the question whether that situation is governed by one of the particular provisions set out in Articles 46 to 59b of that directive (see, by analogy with the Sixth Directive, Case C-327/94 *Dudda* [1996] ECR I-4595, paragraph 21).

30 In the present case, it is necessary to examine whether a storage service such as that at issue in the main proceedings is capable of coming within the scope of Article 47 of the VAT Directive.

31 With regard to the wording of that Article 47, which corresponds, essentially, to Article 9(2)(a) of the Sixth Directive, it is clear that the storage services do not form part of the services expressly listed in Article 47, with the result that no useful conclusion for the purpose of answering the question referred can be drawn from the wording of Article 47.

32 However, it is apparent from the Court's case-law that only supplies of services which have a sufficiently direct connection with immovable property come under Article 47 of the VAT Directive (see, to that effect, *Inter-Mark Group*, paragraph 30). Such a connection is, moreover, characteristic of all supplies of services listed in that article (see, as regards Article 9(2)(a) of the Sixth Directive, *Heger*, paragraph 24).

33 As far as the concept of 'immovable property' is concerned, it should be borne in mind that the Court has already held that one of the essential characteristics of such property is that it is attached to a specific part of the territory of the Member State in which it is located (see, to that effect, *Heger*, paragraph 20).

34 Consequently, as the Advocate General noted at point 35 of her Opinion, in order for a supply of services to come within the scope of Article 47 of the VAT Directive, that supply must be connected to expressly specific immovable property.

35 However, in so far as a large number of services are connected in one way or another with immovable property, it is, in addition, necessary that the supply of services should relate to the immovable property itself. That is the case, inter alia, where expressly specific immovable property must be considered to be a constituent element of a supply of services, in that it constitutes a central and essential element thereof (see, to that effect, *Heger*, paragraph 25).

36 It is clear that the supplies of services listed in Article 47 of the VAT Directive, which concern the use or the development of immovable property, or the management, including the operation and evaluation, of such property, are characterised by the fact that the immovable property itself constitutes the subject matter of the service.

37 It follows that a storage service such as that at issue in the main proceedings, which cannot be regarded as relating to the development, management or evaluation of immovable property, is capable of coming within the scope of Article 47 only on the condition that the recipient of that service is given a right to use all or part of expressly specific immovable property.

38 If, as the Advocate General noted at points 42 and 43 of her Opinion, it were to transpire that the recipients of such a storage service have, for example, no right of access to the part of the property where their goods are stored or that the immovable property on which or in which those goods are to be stored does not constitute a central and essential element of the supply of services – this being a matter for the national courts to determine –, a supply of services such as that at issue in the main proceedings could not come within the scope of Article 47 of the VAT Directive.

39 Consequently, the answer to the question referred is that Article 47 of the VAT Directive must be interpreted as meaning that the supply of a complex storage service, comprising admission of goods to a warehouse, placing them on the appropriate storage shelves, storing them, packaging them, issuing them, unloading and loading them, comes within the scope of that article only if the storage constitutes the principal service of a single transaction and only if the recipients of that service are given a right to use all or part of expressly specific immovable property.

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 (First Chamber) hereby rules:

Article 47 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8/EC of 12 February 2008, must be interpreted as meaning that the supply of a complex storage service, comprising admission of goods to a warehouse, placing them on the appropriate storage shelves, storing them, packaging them, issuing them, unloading and loading them, comes within the scope of that article only if the storage constitutes the principal service of a single transaction and only if the recipients of that service are given a right to use all or part of expressly specific immovable property.

[Signatures]

* Language of the case: Polish.