

JUDGMENT OF THE COURT (Seventh Chamber)

9 July 2015 (*)

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Articles 273 and 287 — Obligation to register a taxable person for VAT purposes — Whether veterinary services are taxable — Principle of legal certainty — Principle of protection of legitimate expectations)

In Case C-144/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Maramureş (Romania), made by decision of 17 October 2013, received at the Court on 26 March 2014, in the proceedings

Cabinet Medical Veterinar Dr. Tomoiag? Andrei

v

Direc?ia General? Regional? a Finan?elor Publice Cluj Napoca prin Administra?ia Jude?ean? a Finan?elor Publice Maramure?,

THE COURT (Seventh Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Seventh Chamber, J.L. da Cruz Vilaça and C. Lycourgos, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Cabinet Medical Veterinar Dr. Tomoiag? Andrei, by R.D. Apan, avocat,
- the Romanian Government, by R.-H Radu, D.M. Bulancea and A.G. Vacaru, acting as Agents,
- the Greek Government, by K. Nasopoulou and I. Kotsoni, acting as Agents,
- the European Commission, by R. Lyal and L. Nicolae, 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 the principles of legal certainty and protection of legitimate expectations, and of Article 273 and point 18 of Article 287 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 2009/162/EU of 22 December 2009 (OJ 2010 L 10, p. 14), 'Directive 2006/112').

2 The request has been made in proceedings between the Cabinet Medical Veterinar Dr. Tomoiag? Andrei (veterinary practice of Dr Andrei Tomoiag?, 'the veterinary practice') and the Direc?ia General? Regional? a Finan?elor Publice Cluj Napoca prin Administra?ia Jude?ean? a Finan?elor Publice Maramure? (Regional Directorate of Public Finances of Cluj Napoca, represented by the Provincial Administration of Public Finances, Maramure?, 'the tax authority'), concerning the payment of value added tax ('VAT') in respect of veterinary care services provided between 1 October 2007 and 31 December 2010.

Legal context

Directive 2006/112

3 Article 2(1)(c) of Directive 2006/112 provides:

'The following transactions shall be subject to VAT:

...

c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such.'

4 Article 132(1) of that directive provides:

'Member States shall exempt the following transactions:

...

b) hospital and medical care and closely related activities, ...

c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

...'

5 Under Article 213(1) of that directive:

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

...'

6 Article 214(1)(a) of that directive is worded as follows:

'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 ... who within their respective territory carries out supplies of goods or services in respect of which VAT is deductible, ...'

7 Article 250(1) of Directive 2006/112 provides:

‘Every taxable person shall submit a VAT return setting out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, in so far as is necessary for the establishment of the basis of assessment, the total value of the transactions relating to such tax and deductions and the value of any exempt transactions.’

8 The first paragraph of Article 273 of that directive reads as follows:

‘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.’

9 Article 287 of that directive provides:

‘Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the following amounts at the conversion rate on the day of their accession:

...

(18) Romania: EUR 35 000.’

Romanian law

10 Article 141 of Law No 571/2003 establishing the Tax Code (Legea nr. 571/2003 privind Codul fiscal, *Monitorul Oficial al României*, Part I, No 927 of 23 December 2003, ‘the Tax Code’), relating to exemptions for transactions carried out within the country, provided the following:

‘(1) The following transactions of general interest shall be exempt from [VAT]:

(a) hospitalisation and medical care, including veterinary treatment and closely related activities ...’

11 Article 141 of the Tax Code, as amended by Law No 343/2006 (*Monitorul Oficial al României*, Part I, No 662 of 1 August 2006), which entered into force on 1 January 2007, provides:

‘(1) The following transactions of general interest shall be exempt from tax:

(a) hospitalisation, medical care and closely related activities ...’

12 Under Article 152 of the Tax Code, as amended by Law No 343/2006:

‘(1) A taxable person established in Romania whose annual turnover, declared or realised, is under the threshold of EUR 35 000 ... may request exemption from the tax, hereinafter ‘the special exemption scheme’, in respect of the transactions listed in Article 126(1) ...

...

(6) A taxable person to which the special exemption scheme applies and whose turnover, as referred to in paragraph 2, is equal to or above the exemption threshold for a calendar year must seek registration for VAT purposes, in accordance with Article 153, within 10 days of the date on which that threshold is reached or exceeded. ... The special exemption scheme shall apply until the date of VAT registration in accordance with Article 153. Where the taxable person concerned

does not request registration or is late in doing so, the competent tax authorities shall be entitled to make that person liable to pay the VAT, together with the related ancillary debts, with effect from the date on which the taxable person should have been registered for VAT purposes under Article 153.

...'

13 Article 153 of the Tax Code, as amended by Law No 343/2006, reads as follows:

'(1) A taxable person who is established in Romania ... and who engages or intends to engage in an economic activity involving taxable transactions and/or VAT-exempt transactions with a right of deduction, shall be required to request registration for VAT purposes with the competent tax authority, in accordance with the following rules:

(a) before carrying out such transactions, in the following circumstances:

1. if [the taxable person] declares that he will have a turnover equal to or above the exemption threshold set in Article 152(1) in relation to the special exemption scheme for small businesses;

2. if [the taxable person] declares that he will have a turnover below the exemption threshold set in Article 152(1), but opts for the normal VAT scheme to apply;

...

(7) Where the person required to register pursuant to paragraphs 1, 2, 4 or 5 fails to request registration, the competent tax authorities shall register that person of their own motion.

...'

14 Regulation No 44/2004 of 22 January 2004, approving the Detailed Rules for the Implementation of Law No 571/2003 establishing the Tax Code (*Monitorul Oficial al României*, Part I, No 112, of 6 February 2004), in the version in force from 1 January 2007 to 31 December 2009, provided in the annex thereto:

'Detailed implementing rules:

...

24. The exemption provided for in Article 141(1)(a) of the Tax Code:

(a) shall apply to transactions closely related to hospitalisation and medical care, including the supply of medicines, bandages, prostheses and related accessories, orthopaedic products and other similar goods for patients during the treatment period and also the supply of board and lodging to patients during hospitalisation and medical treatment;

(b) shall not apply to the supply of medicines, bandages, medical prostheses or related accessories, orthopaedic products and other goods, which is not carried out in the context of hospitalisation or medical treatment, such as supplies carried out by a pharmacy, even where the pharmacy is located within a hospital or clinic and/or managed on behalf of a hospital or clinic.

...'

15 Regulation No 1620/2009 of 29 December 2009 (*Monitorul Oficial al României*, Part I, No 927 of 31 December 2009) supplemented and amended the detailed implementing rules of the Tax Code laid down in Regulation No 44/2004. As of 1 January 2010, those rules provide the

following:

‘Detailed implementing rules:

24. (1) The exemption provided for in Article 141(1)(a) of the Tax Code:

...

(c) shall not apply to veterinary services by virtue of the judgment in [*Commission v Italy*, 122/87, EU:C:1988:256 of the Court of Justice of the European Union].

...’

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

16 In May 2011, following a tax inspection, the tax authority demanded from the veterinary practice payment of VAT, together with surcharges and interest, relating to veterinary services which it had provided between 1 October 2007 and 31 December 2010.

17 The veterinary practice challenged that decision before the Tribunalul Maramureş (Regional Court, Maramureş) on the ground that, until 1 January 2010, the Romanian legislation exempted those activities from VAT, or that there was at least a doubt in that respect which was only resolved following the entry into force on 1 January 2010 of Regulation No 1620/2009.

18 The tax authority, in contrast, contends that that exemption ceased to be applicable as of 1 January 2007, the date when Law No 343/2006, which removed the reference to veterinary activities from the list of services exempt from VAT, came into force. In addition, the tax authority submits that Regulation No 1620/2009 could not in any event amend a national legal provision of a higher level, that is to say a legislative text, and that that regulation merely clarified the applicable legal regime.

19 In the main proceedings, the referring court seeks guidance on the obligations of tax authorities under Article 273 of Directive 2006/112, and in particular on the issue of whether that article requires the tax authority to register of its own motion a taxable person for VAT purposes as soon as the person concerned submits tax returns revealing that his income exceeds the VAT exemption threshold.

20 The referring court is also uncertain as to whether the principle of legal certainty precludes a demand for payment of VAT in circumstances such as those in the main proceedings where the tax authority did not comply with that obligation to register of its own motion a taxable person for VAT purposes and did not in practice apply that tax to veterinary services during the period from 1 October 2007 to 31 December 2010. The referring court also seeks guidance on the implications of the fact that the judgment in *Commission v Italy* 122/87, EU:C:1988:256 was not published in Romanian during that period.

21 In those circumstances, the Tribunalul Maramureş decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

(1) Must Article 273 and point 18 of Article 287 of Directive [2006/112] be interpreted as meaning that the national tax authority was under an obligation to register a taxable person for VAT purposes and to find that person liable to pay the VAT, and the related ancillary debts, arising from the fact that the tax exemption threshold had been exceeded, with effect from the date on which the taxable person submitted tax returns to the competent tax authority showing that the VAT exemption threshold had been exceeded?

(2) If the answer to Question 1 is in the affirmative, does the principle of legal certainty preclude national practice on the basis of which the tax authority has established retroactively that a taxable person is liable to pay VAT because the supply of veterinary services is not exempt from VAT and the tax exemption threshold was exceeded, in a situation in which:

- the tax authority did not, of its own motion, register the taxable person for VAT purposes and did not find that person liable to pay VAT from the moment when the taxable person submitted the tax returns showing that the threshold had been exceeded, but did so only later, after the Detailed Rules for the Implementation of the Tax Code had been amended by Regulation No 1620/2009 to the effect that the exemption provided for under Article 141(1)(a) of the Tax Code does not apply to the supply of veterinary services, as established by the judgment in *Commission v Italy* 122/87 EU:C:1988:256, and in relation to a period preceding that amendment;

- through the tax returns submitted by the taxable person, the tax authority had become aware, before the Detailed Rules for the Implementation of the Tax Code were amended by Regulation No 1620/2009 in the manner described above, that the exemption threshold had been exceeded;

- before the publication of Regulation No 1620/2009, the tax authority did not adopt in its area of competence — which also covers the taxable person in the main proceedings — any administrative tax measures designed to establish that taxable persons which are veterinary practices had failed to register for the purposes of VAT incurred as a consequence of the VAT payment exemption threshold being exceeded and, consequently, intended to establish the liability of those persons for VAT;

- during the period preceding the adoption and entry into force of Regulation No 1620/2009, the judgment in *Commission v Italy* 122/87 EU:C:1988:256 had not been published in any form in the Romanian language?

Consideration of the questions referred

The first question

22 By its first question the referring court asks, in essence, whether the first paragraph of Article 273 of Directive 2006/112 requires Member States to register of their own motion a taxable person for the purposes of collecting VAT solely on the basis of tax returns, other than those relating to VAT, where those returns would have made it possible to establish that the taxable person had exceeded the exemption threshold for VAT.

23 It must be observed, first, that under point 18 of Article 287 of Directive 2006/112, to which the national court refers in its first question, Romania is entitled to exempt taxable persons whose annual turnover is no higher than EUR 35 000.

24 Secondly, the first paragraph of Article 273 of Directive 2006/112 provides that Member States may impose other obligations which they deem necessary for the correct collection of VAT

and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons, provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

25 The Court has established that it follows from that provision, and from Articles 2 and 250(1) of Directive 2006/112 and from Article 4(3) TEU that every Member State is under an obligation to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory and for preventing evasion (see, to that effect, judgments in *Commission v Italy*, C?132/06, EU:C:2008:412, paragraphs 37 and 46, and *Åkerberg Fransson*, C?617/10, EU:C:2013:105, paragraph 25).

26 It follows in particular that Member States are required to check taxable persons' returns, accounts and other relevant documents, and to calculate and collect the tax due (see judgments in *Commission v Italy*, C?132/06, EU:C:2008:412, paragraph 37; *Profaktor Kulesza, Frankowski, Jó?wiak, Or?owski*, C?188/09, EU:C:2010:454, paragraph 21; and *Enel Maritsa Iztok 3*, C?107/10, EU:C:2011:298, paragraph 52).

27 It cannot, however, be inferred from those considerations that Member States are required to register of their own motion a taxable person for the purposes of VAT as from the date of the submission of tax returns, other than those relating to VAT, but which make it possible to establish that the exemption threshold for VAT has been exceeded.

28 In the first place, although Article 214(1) of Directive 2006/112 provides that Member States must take the measures necessary to ensure that taxable persons for VAT purposes are identified, the fact remains that, under Article 213(1) of that directive, it is for the interested party to state when his activity as a taxable person commences, changes or ceases. Furthermore, the Court has also held that it follows from the wording of Article 214(1) of that directive that Member States have a certain discretion when they adopt measures to ensure the identification of taxable persons for the purposes of VAT (judgment in *Ablessio*, C?527/11, EU:C:2013:168, paragraph 22).

29 In the second place, Member States are required to ensure compliance with the obligations to which taxable persons are subject, whilst enjoying in that respect a certain measure of latitude, inter alia, as to how they use the means at their disposal (see judgments in *Commission v Italy*, C?132/06, EU:C:2008:412, paragraph 38, and *Profaktor Kulesza, Frankowski, Jó?wiak, Or?owski*, C?188/09, EU:C:2010:454, paragraph 22) subject to the obligation to ensure effective collection of the European Union's own resources and not to create significant differences in the manner in which taxable persons are treated, either within a Member State or throughout the Member States (judgment in *Commission v Italy*, C?132/06, EU:C:2008:412, paragraph 39).

30 It follows from the foregoing that although Directive 2006/112 requires Member States to take the measures necessary to register a taxable person for the purposes of VAT, if need be of their own motion, it does not require them to adopt legislative and administrative measures which ensure that, in the management of tax returns other than those relating to VAT, the taxpayer's compliance with the obligations relating to VAT has been checked at the same time, where those returns do not necessarily contain all the information which may be provided in a VAT return under Article 250(1) of Directive 2006/112 and which is necessary to establish that tax.

31 In those circumstances, the answer to the first question is that the first paragraph of Article 273 of Directive 2006/112 does not require Member States to register of their own motion a taxable person for the purposes of collecting VAT solely on the basis of tax returns, other than those relating to VAT, where those returns would have made it possible to establish that the taxable person had exceeded the exemption threshold for VAT.

The second question

32 By its second question the referring court asks, in essence, whether the principles of legal certainty and protection of legitimate expectations preclude a national tax authority from deciding that veterinary services are subject to VAT in circumstances such as those in the main proceedings.

33 According to the settled case-law of the Court, the principles of legal certainty and protection of legitimate expectations must be respected by the EU institutions, but also by Member States in the exercise of the powers conferred on them by EU directives (see, to that effect, judgments in *Gemeente Leusden and Holin Groep*, C?487/01 and C?7/02, EU:C:2004:263, paragraph 57; '*Goed Wonen*', C?376/02, EU:C:2005:251, paragraph 32; and *Elmeka NE*, C?181/04 to C?183/04, EU:C:2006:563, paragraph 31).

34 In the first place, with regard to the principle of legal certainty, as the Court has repeatedly held, it follows, in particular, that EU legislation must be certain and its application foreseeable by those subject to it, and that requirement of legal certainty must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which they impose on them (judgment in *Ireland v Commission*, 325/85, EU:C:1987:546, paragraph 18).

35 Similarly, in areas covered by EU law, the Member States' legal rules must be worded unequivocally so as to give the persons concerned a clear and precise understanding of their rights and obligations and enable national courts to ensure that those rights and obligations are observed (see judgment in *Commission v Italy*, 257/86, EU:C:1988:324, paragraph 12).

36 In the present case, it is clear from the decision to refer that the Romanian legislature removed the reference to veterinary care from the list of transactions exempt from VAT from the date on which Romania joined the European Union, 1 January 2007, referring in that connection to the need to ensure that the national law is consistent with EU law.

37 In those circumstances, irrespective even of the fact that the judgment in *Commission v Italy* 122/87, EU:C:1988:256, referring to the application of that tax to veterinary care services, was not published in Romanian, it must be observed that a legal arrangement, such as that described above, appears sufficiently clear and predictable as regards the application of VAT to those services during the period at issue in the main proceedings; that, however, is a matter for the referring court to establish.

38 In that respect, it must be pointed out in particular that VAT is of general application, and that only transactions which are expressly exempt from VAT fall outside its scope. It follows that merely removing a transaction from the list of exempt transactions is sufficient, from the point of view of legal certainty, for such a transaction to be taxable.

39 Admittedly, it also follows from the principle of legal certainty that the tax position of the taxable person cannot be open to challenge indefinitely (see, to that effect, judgment in *Fatorie*, C?424/12, EU:C:2014:50, paragraph 46).

40 However, the Court has already held that the principle of legal certainty does not preclude a practice of the national tax authorities whereby, within the limitation period, they revoke a decision by which they granted the taxable person the right to deduct VAT and then, following a fresh investigation, order him to pay that VAT together with default interest (see, to that effect, judgment in *Fatorie*, C?424/12, EU:C:2014:50, paragraph 51).

41 The mere fact that the tax authority reclassifies a given transaction as an economic activity subject to VAT during the limitation period cannot therefore, in itself and in the absence of other circumstances, undermine that principle.

42 Consequently, it cannot reasonably be argued that the principle of legal certainty, in circumstances such as those in the main proceedings, precludes a tax authority from carrying out, within the limitation period, an assessment for VAT relating to veterinary services already provided and which should have been subject to VAT.

43 In the second place, with regard to the principle of protection of legitimate expectations, the right to rely on that principle extends to any person in a situation where an administrative authority has caused him to entertain expectations which are justified by precise assurances provided to him (see, to that effect, judgment in *Europäisch Iranische Handelsbank v Council*, C?585/13 P, EU:C:2015:145, paragraph 95).

44 In that regard, it must be determined whether the conduct of the administrative authority gave rise to a reasonable expectation in the mind of a reasonably prudent economic operator, and if that is the case, to establish whether that expectation is legitimate (see, to that effect, judgment in *Elmek*, C?181/04 to C?183/04, EU:C:2006:563, paragraph 32 and the case-law cited).

45 It is, however, apparent from the file submitted to the Court that an administrative practice of the national tax authorities relating to the status of veterinary practitioners as taxable persons for VAT purposes does not appear to be capable of demonstrating that those conditions have been satisfied in the main proceedings.

46 In particular, the fact that the national tax authorities did not systematically make veterinary services subject to VAT during the period at issue in the main proceedings, a fact denied by the Romanian Government, is not *a priori* sufficient, except in very exceptional circumstances, to create in the mind of a reasonably prudent economic operator a reasonable expectation that VAT will not be applied to those services since, as has been stated above, VAT is of general application and veterinary services had been removed from the list of exempt transactions on 1 January 2007.

47 Such a practice, however regrettable it may be, cannot in itself be regarded as giving the taxpayers concerned precise assurances to that effect.

48 It follows from the foregoing considerations that the answer to the second question is that the principles of legal certainty and protection of legitimate expectations do not preclude a national tax authority from deciding that veterinary services are subject to VAT in circumstances such as those in the main proceedings, provided that that decision is based on clear rules and the practice of that authority was not such as to create in the mind of a reasonably prudent economic operator a reasonable expectation that VAT would not be applied to those services, that being a matter for the referring court to establish.

Costs

49 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 (Seventh Chamber) hereby rules:

1. The first paragraph of Article 273 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/162/EU of 22 December 2009, does not require Member States to register of their own motion a taxable person for the purposes of collecting value added tax solely on the basis of tax returns, other than those relating to value added tax, where those returns would have made it possible to establish that the taxable person had exceeded the exemption threshold for value added tax.

2. The principles of legal certainty and protection of legitimate expectations do not preclude a tax authority from deciding that veterinary services are subject to value added tax in circumstances such as those in the main proceedings, provided that that decision is based on clear rules and the practice of that authority was not such as to create in the mind of a reasonably prudent economic operator a reasonable expectation that value added tax would not be applied to those services, that being a matter for the referring court to establish.

[Signatures]

* Language of the case: Romanian.