

JUDGMENT OF THE COURT (Seventh Chamber)

9 July 2015 (*)

(Reference for a preliminary ruling) — Value added tax (VAT) — Directive 2006/112/EC — Articles 167, 168, 179 and 213 — Reclassification by the national tax authority of a transaction as an economic activity subject to VAT — Principle of legal certainty — Principle of protection of legitimate expectations — National legislation making the exercise of the right of deduction subject to the identification of the trader concerned for VAT purposes and to the filing of a tax return in respect of that tax)

In Case C-183/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Cluj (Romania), made by decision of 28 February 2014, received at the Court on 11 April 2014, in the proceedings

Radu Florin Salomie,

Nicolae Vasile Oltean

v

Direcția Generală a Finanțelor Publice Cluj,

THE COURT (Seventh Chamber),

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

Advocate General: N. Jääskinen,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 11 March 2015,

after considering the observations submitted on behalf of:

- Mr Salomie and Mr Oltean, by C.F. Costa, L. Dobrinescu and T.-D. Vidrean Căpușan, avocats,
- the Romanian Government, by R.-H. Radu, D.M. Bulancea and R.I. Hăgăgeanu., acting as Agents,
- the European Commission, by C. Soulay and A. Tefan, 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 the protection of legitimate expectations and the interpretation of Articles 167, 168, 179 and 213 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 made in proceedings between Mr Salomie and Mr Oltean, on the one hand, and the Direc?ia General? a Finan?elor Publice Cluj (Directorate-General for the Public Finances of the District of Cluj) ('the tax authority'), on the other, concerning the application of value added tax (VAT) to sales of immovable property carried out in 2009.

Legal context

Directive 2006/112

3 Article 9(1) of Directive 2006/112 provides:

“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 ... 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 According to Article 12(1) of that directive:

‘Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in the second subparagraph of Article 9(1) and in particular one of the following transactions:

(a) the supply, before first occupation, of a building or parts of a building and of the land on which the building stands;

...’

5 Article 167 of that directive provides:

‘A right of deduction shall arise at the time the deductible tax becomes chargeable.’

6 Article 168 of Directive 2006/112 is worded as follows:

‘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 According to Article 169 of the directive:

‘In addition to the deduction referred to in Article 168, the taxable person shall be entitled to deduct the VAT referred to therein in so far as the goods and services are used for the purposes of the following:

...’

8 Article 179 of Directive 2006/112 provides:

‘The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178.

...’

9 Article 213(1) of the directive provides:

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

...’

10 Article 214(1)(a) of Directive 2006/112 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. ...

...’

11 Article 273 of that directive is worded 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.

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.’

Romanian law

12 Article 77a(1) 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’) provides:

‘Upon the transfer of the right of ownership and fractions thereof, on the basis of legal instruments *inter vivos* dealing with buildings of any type and associated land and also land of any type without buildings, taxpayers shall be liable to pay tax calculated in the following manner:

...’

13 Article 127 of the Tax Code provides:

‘(1) “Taxable person” shall mean any person who, independently, carries out in any place an economic activity as referred to in paragraph 2, whatever the purpose or results of that activity.

(2) For the purposes of the present Title, “economic activity” shall include the activities of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions or equivalent. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

...’

14 Emergency Order No 109 of 7 October 2009 amending and supplementing Law No 571/2003 establishing the Tax Code, which entered into force on 1 January 2010, added a paragraph 2a to Article 127 of the Tax Code, which is worded as follows:

‘The rules specify the situations in which natural persons who supply immovable property become taxable persons’.

15 According to Article 141(2) of the Tax Code, in the version applicable up to 31 December 2007:

‘The following transactions shall also be exempt from VAT:

...

(f) the supply by any person of a building or part thereof and of the land on which it is constructed, and of any other land. This exemption shall not apply, however, to the supply of new buildings or parts thereof, or of building land, if carried out by a taxable person who has exercised or who would be entitled to exercise the right of total or partial deduction of the VAT paid on the purchase, conversion or construction of such a building. ...’

16 Article 141(2)(f) of the Tax Code, in the version in force between 1 January 2008 and 31 December 2009, provided that a VAT exemption applied to:

‘the supply by any person of a building or part thereof and of the land on which it is constructed, and of any other land. This exemption shall not apply, however, to the supply of new buildings or parts thereof, or of building land. ...’

17 Paragraph 3(2) of Government Decision No 44/2004 of 22 January 2004 approving the rules for the application of Law No 571/2003 establishing the Tax Code (*Monitorul Oficial al României*, Part I, No 112 of 6 February 2004), provides, in the version in force from 1 January 2007 to 31 December 2009:

‘For the purposes of Article 127(2) of the Tax Code, the obtaining of income by natural persons from the sale of personally-owned dwellings or other property used by them for personal purposes shall not be regarded as an economic activity, unless it is established that the activity in question is being carried out in order to obtain income on a continuing basis in accordance with Article 127(2) of the Tax Code. ...’

18 Government Decision No 1620/2009 of 29 December 2009 (*Monitorul Oficial al României*, Part I, No 927 of 31 December 2009) supplemented and amended the provisions for the

application of the Tax Code laid down by Government Decision No 44/2004. As from 1 January 2010, Paragraph 3 of Government Decision No 44/2004 has provided as follows:

- ‘(1) Pursuant to Article 127(2) of the Tax Code, the exploitation of tangible or intangible goods shall, in accordance with the fundamental principle of the VAT regime whereby the tax must be neutral, cover every kind of transaction, regardless of its legal form ...
- (2) In accordance with Paragraph 1, natural persons shall be deemed not to be carrying on an economic activity subject to VAT in the case where they obtain income from the sale of personally-owned dwellings or other property used by them for personal purposes.
- (3) A natural person who has not already become a taxable person in respect of another activity shall be regarded as carrying on an economic activity involving the exploitation of tangible or intangible property if he acts as such, in an independent manner, and if the activity in question is carried on in order to obtain from it income on a continuing basis within the meaning of Article 127(2) of the Tax Code.
- (4) Where immovable property is constructed by a natural person for the purposes of being sold, the economic activity shall be regarded as having commenced at the time when the natural person in question formed the intention of carrying on that activity, and his intention must be assessed on the basis of objective factors, such as the fact that he began to incur expenses and/or make preparatory investments with a view to commencing the economic activity. The economic activity shall be regarded as being conducted on a continuing basis from its commencement and shall also include the supply of the immovable property constructed, or parts of that property, even in the case of a single immovable property. ...
- (5) Where land and/or buildings are acquired by a natural person for the purposes of being sold, the supply of that property shall be regarded as an economic activity of a continuing nature if the natural person carries on more than one single transaction during a calendar year. However, if the natural person is already constructing immovable property for the purposes of selling it, in accordance with subparagraph 4, since the economic activity is already regarded as having commenced and as being of a continuing nature, every other transaction carried out subsequently shall no longer be capable of being regarded as occasional in nature. ...
- ...’

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

19 In the course of 2007, Mr Salomie and Mr Oltean entered into a partnership with five other natural persons to carry out a project for the construction and sale of four buildings in Romania. That partnership had no legal personality and was not declared or identified as being subject to VAT.

20 In 2008 and 2009, out of the 132 apartments constructed on land belonging to the personal assets of one of those persons, 122 were sold, for a total value of 10 902 275 Romanian lei (RON), as were 23 car-parking spaces. Those sales were not subject to VAT.

21 In the course of 2010, following an audit carried out by the tax authority, the latter took the view that those transactions constituted a continuous economic activity and that VAT ought therefore to have been paid on them from 1 October 2008, given that the resulting turnover had, as from August 2008, exceeded the threshold of EUR 35 000 below which economic activities are exempt from VAT in Romania.

22 Consequently, the tax authority sought payment of the VAT due on the transactions carried out during 2009, together with default interest, and issued separate tax demands to that effect.

23 It also follows from the order for reference that the sales of immovable property carried out during 2008 and 2009 were made subject to the tax on the 'transfer of immovable property belonging to personal assets' provided for in Article 77a of the Tax Code.

24 Mr Salomie and Mr Oltean brought actions before the Tribunalul Cluj (Cluj District Court) seeking partial annulment of those tax demands. That court dismissed those actions as being unfounded.

25 The Curtea de Apel Cluj (Cluj Court of Appeal), before which an appeal has been brought, is unsure whether the tax demands drawn up by the tax authority are consistent with the principle of legal certainty inasmuch as, first, the Romanian legislation laid down the provisions for implementing the rules governing the application of VAT to property transactions only as from 1 January 2010 and, second, the tax authority's practice, up to that date, had rather been not to make that type of transaction subject to VAT. Moreover, sufficient information had, according to the referring court, been available to that authority for it to conclude that Mr Salomie and Mr Oltean had had taxable person status since 2008, inasmuch as the authority had been informed of the sales which those two persons had carried out, if only because those transactions had been taxed pursuant to Article 77a of the Tax Code.

26 The referring court also expresses doubts as to whether the right to deduct the input VAT paid provided for by Romanian law, pursuant to which a person belatedly identified as a taxable person for VAT purposes may exercise the right to deduct VAT only after regularising his situation through identification for the purposes of that tax and the filing of a tax return, is compatible with Directive 2006/112.

27 In those circumstances, the Curtea de Apel Cluj decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) May a natural person who enters into a partnership contract with other natural persons, a partnership without legal personality that is not declared or identified for tax purposes, intended for the execution of future works (building) on a site forming part of the personal assets of some of the contracting parties be regarded, in the light of the circumstances of the main case, as a taxable person for VAT purposes within the meaning of Article 9(1) of Directive 2006/112, where, under the fiscal rules, the tax authority initially treated the transfer of ownership of the buildings on the site forming part of the personal assets of some of the contracting parties as sales falling within the scope of the management of the private wealth of such persons?

(2) In the light of the circumstances of the main case, must the principles of legal certainty and the protection of legitimate expectations, and the other general principles relating to VAT, as laid down in Directive 2006/112, be interpreted as precluding a national practice whereby, after initially levying on a natural person tax on the income deriving from the transfer of ownership of properties forming part of his personal wealth, the tax authority — without there having been any substantial amendment of primary law — reviews the position after a period of two years on the basis of the same facts and classifies the same transactions as economic activities subject to VAT, calculating the incidental charges retroactively?

(3) Must Articles 167, 168 and 213 of Directive 2006/112, considered in the light of the principle of fiscal neutrality, be interpreted as precluding, in the circumstances of the main case, the tax authority from refusing a taxable person the right to deduct the VAT owed or paid on goods or

services used for the purposes of taxable transactions simply because he was not identified as a taxable person for VAT purposes at the time when the supplies in question were carried out?

(4) In the light of the circumstances of the main case, may Article 179 of Directive 2006/112 be interpreted as precluding national legislation under which a taxable person to whom the special exemption scheme is applied and who has belatedly applied for identification for VAT purposes is under an obligation to pay the tax that should have been levied, but has no right to subtract the amount of tax deductible for each tax period, it being the case that that right of deduction will be exercised subsequently on the basis of the tax return submitted after identification of the taxable person for VAT purposes, which may have repercussions for calculation of the incidental charges?’

Consideration of the questions referred for a preliminary ruling

The first and second questions

28 By its first two questions, which it is appropriate to examine together, the referring court is essentially asking whether the principles of legal certainty and of the protection of legitimate expectations preclude, in circumstances such as those of the main proceedings, a national tax authority from deciding, during a tax audit, that transactions ought to have been subject to VAT and from imposing, in addition, the payment of surcharges.

29 With regard, in the first place, to the principle of legal certainty, Mr Salomie and Mr Oltean challenge the tax authority’s decision by asserting that that principle has been infringed by reason of the fact that, when they carried out the property transactions concerned by that decision, neither 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), which was in force prior to 1 January 2007, nor the case-law of the Court of Justice relevant to the area of VAT had been published in the Romanian language. They also submit that, until 2010, the national tax authorities did not regard that type of transaction as being subject to VAT.

30 According to settled case-law of the Court, the principles of legal certainty and of the protection of legitimate expectations must be observed not only by the EU institutions, but also by Member States in the exercise of the powers conferred on them under EU directives (see, to that effect, *inter alia*, judgments in *Gemeente Leusden and Holin Groep*, C-487/01 and C-7/02, EU:C:2004:263, paragraph 57; in ‘*Goed Wonen*’, C-376/02, EU:C:2005:251, paragraph 32; and in *Elmeka NE*, C-181/04 to C-183/04, EU:C:2006:563, paragraph 31).

31 As the Court has held on numerous occasions, it follows, *inter alia*, that EU legislation must be certain and its application foreseeable by those who are subject to it. 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 those rules impose on them (judgment in *Ireland v Commission*, 325/85, EU:C:1987:546, paragraph 18).

32 Similarly, in areas covered by EU law, the legal rules of the Member States must be worded unequivocally so as to give the persons concerned a clear and precise understanding of their rights and obligations and to 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).

33 In the present case, it cannot be disputed that provisions such as those identified in the order for reference do have such a character.

34 It follows in particular from the order for reference that the definition of ‘taxable person’, contained in Article 127 of the Tax Code, which transposes the provisions of Article 9(1) of Directive 2006/112 into national law, refers to any person who, independently, carries out in any place an economic activity, whatever the purpose or results of that activity, and that any activity of producers, traders or persons supplying services — including, in particular, the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis — must be regarded as an ‘economic activity’.

35 Furthermore, Paragraph 3(2) of Government Decision No 44/2004 approving the rules for application of the Tax Code makes it clear that, for the purposes of Article 127(2) of the Tax Code, the obtaining of income by natural persons from the sale of personally-owned dwellings or other property used by them for personal purposes is not to be regarded as an economic activity unless it is established that the activity in question is being carried out in order to obtain income on a continuing basis.

36 Finally, Article 141 of the Tax Code, in the version in force during 2008 and 2009, provided that the VAT exemption that applied to the supply of buildings or parts of buildings and the land on which they were constructed did not apply to the supply of new buildings or parts thereof, or of building land, which, moreover, is in line with the principles governing VAT under EU law.

37 It cannot, therefore, validly be argued that such national-law provisions do not lay down in a sufficiently clear and precise way that the supply of buildings or parts of buildings and the land on which they are constructed may, in certain cases, be subject to VAT.

38 In those circumstances, Mr Salomie and Mr Oltean cannot validly rely, in support of their argument that the applicable national legal framework was not sufficiently clear at the time of the material facts, that there had been no publication of a Romanian-language version of the relevant case-law of the Court in the area or of Sixth Directive 77/388, which, in any event, was no longer in force from the accession of Romania to the European Union on 1 January 2007.

39 Thus, the circumstances of the case in the main proceedings cannot be compared to those of the case which gave rise to the judgment in *Skoma-Lux* (C-161/06, EU:C:2007:773), in which the Court made it clear that an EU regulation which is not published in the language of a Member State is unenforceable against individuals in that State.

40 It also follows, admittedly, 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).

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

42 Therefore, the mere fact that the tax authorities reclassify a particular transaction as an economic activity subject to VAT, during the limitation period, cannot, in itself and in the absence of other factors, undermine that principle.

43 Consequently, it cannot validly be argued that the principle of legal certainty precludes, in circumstances such as those of the main proceedings, the tax authority from taking the view, following a tax audit, that the property transactions at issue in this case ought to have been subject to VAT.

44 In the second place, in relation to the principle of the protection of legitimate expectations, the right to rely on that principle extends to any person in a situation in which an administrative authority has caused that person 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).

45 In this regard, it is necessary to determine whether the conduct of an administrative authority has given rise to a reasonable expectation in the mind of a prudent and well-informed trader and, if it did, the legitimate nature of that expectation must then be established (see, to that effect, judgment in *Elmeke*, C?181/04 to C?183/04, EU:C:2006:563, paragraph 32 and the case-law cited).

46 As described in the order for reference, the administrative practice of the national tax authorities nevertheless does not appear to be such as to show that those conditions are satisfied in the case in the main proceedings.

47 In particular, although it was disputed during the hearing by the Romanian Government, the fact that, until 2010, the national tax authorities had not made property transactions such as those at issue in the main proceedings subject to VAT in a systematic manner does not in principle suffice, except in very specific circumstances, to give rise, in the mind of a prudent and well-informed trader, to a reasonable expectation that that tax would not be levied on such transactions, taking into account not only the clarity and foreseeability of the applicable national law, but also the fact that the present case appears to involve professionals from the property sector.

48 Such a practice, however regrettable it may be, is not in principle such as to provide the taxpayers concerned with precise assurances that VAT will not be levied on property transactions such as those at issue in the main proceedings.

49 It should be added that, in view of the scale of the property transaction at issue in the main proceedings, consisting in the construction and sale of four buildings totalling more than 130 apartments, a prudent and well-informed trader could not reasonably have concluded that such a transaction would not be subject to VAT without having received, or at least sought, express assurances to that effect from the competent national tax authorities.

50 As regards, in the third and final place, the conformity with EU law of the surcharges applied in this case by the tax authority, it must be borne in mind that, in the absence of harmonisation of EU legislation in the field of the penalties applicable in cases of non-compliance with the conditions laid down by arrangements established under such legislation, Member States retain the power to choose the penalties which seem to them to be appropriate. They must, however, exercise that power in accordance with EU law and its general principles, and, consequently, in accordance with the principle of proportionality (see judgment in *Fatorie*, C?424/12, EU:C:2014:50, paragraph 50 and the case-law cited).

51 Thus, although Member States may, in order to ensure the correct levying and collection of the tax and to prevent fraud, inter alia, lawfully lay down, in their respective provisions of national law, appropriate penalties to sanction the failure to observe the obligation to register persons

taxable for VAT purposes, such penalties must not, however, go further than is necessary to attain those objectives. It is for the national court to determine whether the amount of the penalty does not go further than is necessary to attain the objectives of ensuring the correct levying and collection of the tax and the prevention of fraud, having regard to the facts of the case and, *inter alia*, the sum actually imposed and the possible existence of fraud or circumvention of the applicable legislation attributable to the taxable person whose failure to register is being penalised (see, to that effect, judgment in *R?dlihs*, C?263/11, EU:C:2012:497, paragraphs 45, 46 and 54).

52 The same principles apply to surcharges, which, if they are in the nature of tax penalties (this being a matter for the referring court to determine), must not be excessive in relation to the seriousness of the breach, by the taxable person, of his obligations.

53 Accordingly, the answer to the first two questions is that the principles of legal certainty and of the protection of legitimate expectations do not preclude, in circumstances such as those of the dispute in the main proceedings, a national tax authority from deciding, following a tax audit, to subject transactions to VAT and to impose the payment of surcharges, provided that that decision is based on clear and precise rules and that that authority's practice has not been such as to give rise, in the mind of a prudent and well-informed trader, to a reasonable expectation that that tax would not be levied on such transactions, this being a matter for the referring court to determine. The surcharges applied in such circumstances must comply with the principle of proportionality.

The third and fourth questions

54 By its third and fourth questions, which it is appropriate to examine together, the referring court is essentially asking whether Directive 2006/112 precludes national rules under which the right to deduct input VAT, due or paid on goods and services used in the context of taxed transactions, is refused to the taxable person, who must nevertheless pay the tax that he ought to have paid, for the sole reason that he was not identified for VAT purposes when he carried out those transactions, so long as he has not been duly identified for VAT purposes and the tax return for the tax due has not been filed.

55 Article 167 et seq. of Directive 2006/112 set out the origin and scope of the right of deduction. It should, in particular, be observed that, pursuant to Article 167 of that directive, that right arises at the time at which the deductible tax becomes chargeable.

56 According to settled case-law of the Court, the right to deduct is a fundamental principle of the common system of VAT, which in principle may not be limited, and is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (see, to that effect, *inter alia*, judgments in *Gabalfrisa and Others*, C?110/98 to C?147/98, EU:C:2000:145, paragraph 43, and in *Idexx Laboratories Italia*, C?590/13, EU:C:2014:2429, paragraphs 30 and 31).

57 That system is designed to relieve the trader entirely of the burden of the VAT due or paid in the course of all his economic activities. The common system of VAT consequently ensures that all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT, are taxed in a wholly neutral way (see, to that effect, judgments in *Gabalfrisa and Others*, C?110/98 to C?147/98, EU:C:2000:145, paragraph 44, and in *Idexx Laboratories Italia*, C?590/13, EU:C:2014:2429, paragraph 32)

58 Furthermore, the Court has already held that the fundamental principle of VAT neutrality requires that deduction of input VAT be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements (see, to that effect, judgments in *Ecotrade*, C?95/07 and C?96/07, EU:C:2008:267 paragraph 63; in *Uszodaépít?*, C?392/09, EU:C:2010:569, paragraph 39; in *Nidera Handelscompagnie*, C?385/09,

EU:C:2010:627, paragraphs 42 and 43; and in *Idexx Laboratories Italia*, C?590/13, EU:C:2014:2429, paragraph 38).

59 Consequently, where the tax authority has the information necessary to establish that the substantive requirements have been satisfied, it cannot, in relation to the right of the taxable person to deduct that tax, impose additional conditions which may have the effect of rendering that right ineffective for practical purposes (see judgment in *Idexx Laboratories Italia*, C?590/13, EU:C:2014:2429, paragraph 40).

60 Identification for VAT purposes, provided for in Article 214 of Directive 2006/112, and the obligation of the taxable person to state when his activity as a taxable person commences, changes or ceases, provided for in Article 213 of that directive, are only formal requirements for the purposes of control, and they cannot undermine, inter alia, the right to deduct VAT in the case where the substantive conditions which give rise to that right are satisfied (see, to that effect, judgments in *Nidera Handelscompagnie*, C?385/09, EU:C:2010:627, paragraph 50; in *Tóth*, C?324/11, EU:C:2012:549, paragraph 32; and in *Ablessio*, C?527/11, EU:C:2013:168, paragraph 32).

61 It follows, in particular, that a taxable person for VAT purposes cannot be prevented from exercising his right of deduction on the ground that he was not identified as a taxable person for those purposes before using the goods purchased in the context of his taxed activity (see, to that effect, inter alia, judgment in *Nidera Handelscompagnie*, C?385/09, EU:C:2010:627, paragraph 51).

62 In addition, the measures which the Member States may adopt under Article 273 of Directive 2006/112 to ensure the correct collection of VAT and to prevent evasion must not go further than is necessary to attain those objectives and must not undermine the neutrality of VAT (see, to that effect, inter alia, judgments in *Gabalfriša and Others*, C?110/98 to C?147/98, EU:C:2000:145, paragraph 52; in *Collée*, C?146/05, EU:C:2007:549, paragraph 26; in *Nidera Handelscompagnie*, C?385/09, EU:C:2010:627, paragraph 49; and in *Idexx Laboratories Italia*, C?590/13, EU:C:2014:2429, paragraphs 36 and 37).

63 Thus, penalising the failure on the part of the taxable person to comply with the obligations relating to accounts and tax returns by a denial of the right to deduct clearly goes further than is necessary to attain the objective of ensuring the correct application of those obligations, since EU law does not prevent Member States from imposing, where necessary, a fine or a financial penalty proportionate to the seriousness of the offence. Such a practice also goes further than is necessary for the correct collection of VAT and for the prevention of evasion within the meaning of Article 273 of Directive 2006/112, since it may even lead to the loss of the right to deduct if the reassessment of the tax return by the tax authorities is not made until after the expiry of the limitation period available to the taxable person for the purpose of making the deduction (see, by analogy, judgment in *Ecotrade*, C?95/07 and C?96/07, EU:C:2008:267, paragraphs 67 and 68).

64 In the present case, it is apparent from the file submitted to the Court that the substantive requirements relating to the right to deduct input tax were satisfied and that the appellants in the main proceedings were regarded as taxable persons in respect of VAT during a tax audit. In such conditions, deferral of implementation of the right to deduct VAT until the first tax return in respect of that tax by those taxable persons, on the sole ground that they were not identified for VAT purposes when they carried out the transactions subject to VAT, and as those persons also have to pay the corresponding tax, goes further than is necessary to ensure the correct collection of the tax and to prevent evasion.

65 Accordingly, the answer to the third and fourth questions is that Directive 2006/112

precludes, in circumstances such as those of the dispute in the main proceedings, national rules under which the right to deduct input VAT, due or paid on goods and services used in the context of taxed transactions, is refused to the taxable person, who must nevertheless pay the tax that he ought to have recovered, for the sole reason that he was not identified for VAT purposes when he carried out those transactions, so long as he has not been duly identified for VAT purposes and the tax return for the tax due has not been filed.

Costs

66 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 principles of legal certainty and of the protection of legitimate expectations do not preclude, in circumstances such as those of the dispute in the main proceedings, a national tax authority from deciding, following a tax audit, to subject transactions to value added tax and to impose the payment of surcharges, provided that that decision is based on clear and precise rules and that that authority's practice has not been such as to give rise, in the mind of a prudent and well-informed trader, to a reasonable expectation that that tax would not be levied on such transactions, this being a matter for the referring court to determine. The surcharges applied in such circumstances must comply with the principle of proportionality.

2. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax precludes, in circumstances such as those of the dispute in the main proceedings, national rules under which the right to deduct input value added tax, due or paid on goods and services used in the context of taxed transactions, is refused to the taxable person, who must nevertheless pay the tax that he ought to have recovered, for the sole reason that he was not identified for value-added-tax purposes when he carried out those transactions, so long as he has not been duly identified for value added tax purposes and the tax return for the tax due has not been filed.

[Signatures]

* Language of the case: Romanian.