

**JUDGMENT OF THE COURT (Fourth Chamber)**

15 September 2016 (\*)

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Article 178(a) — Right of deduction — Conditions of exercise — Article 226(6) and (7) — Details required in invoices — Extent and nature of the services rendered — Date on which the supply of services is made)

In Case C-516/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Tax Arbitration Tribunal (Centre for Administrative Arbitration), Portugal), made by decision of 3 November 2014, received at the Court on 17 November 2014, in the proceedings

**Barlis 06 — Investimentos Imobiliários e Turísticos SA**

v

**Autoridade Tributária e Aduaneira,**

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Lycourgos, E. Juhász, C. Vajda (Rapporteur) and K. Jürimäe, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 January 2016,

after considering the observations submitted on behalf of:

- Barlis 06 — Investimentos Imobiliários e Turísticos SA, by P. Braz, advogado,
- the Portuguese Government, by L. Inez Fernandes, R. Campos Laires and A. Cunha, acting as Agents,
- the German Government, by T. Henze, acting as Agent,
- the European Commission, by L. Lozano Palacios and P. Guerra e Andrade, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 February 2016,

gives the following

**Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 178(a) and Article

226(6) 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 Barlis 06 — Investimentos Imobiliários e Turísticos SA ('Barlis') and the Autoridade Tributária e Aduaneira (Tax and Customs Authority, Portugal) concerning the authority's refusal to allow the deduction of input value added tax (VAT) paid by Barlis as the recipient of legal services rendered by a firm of lawyers, on the ground that the invoices issued by them did not satisfy the formal requirements laid down by national legislation.

## **Legal context**

### *EU law*

3 Article 64(1) of Directive 2006/112 provides:

'Where it gives rise to successive statements of account or successive payments, the supply of goods, other than that consisting in the hire of goods for a certain period or the sale of goods on deferred terms, as referred to in point (b) of Article 14(2), or the supply of services shall be regarded as being completed on expiry of the periods to which such statements of account or payments relate.'

4 Under Article 168 of Directive 2006/112:

'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;

...'

5 Article 178 of Directive 2006/112 reads as follows:

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

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

...'

6 Article 219 of Directive 2006/112 provides that any document or message that amends and refers specifically and unambiguously to the initial invoice shall be treated as an invoice.

7 In accordance with Article 220 of Directive 2006/112:

'Every taxable person shall ensure that, in respect of the following, an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party:

(1) supplies of goods or services which he has made to another taxable person or to a non-taxable legal person;

...'

8 Article 226 of Directive 2006/112 provides:

'Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

...

(6) the quantity and nature of the goods supplied or the extent and nature of the services rendered;

(7) the date on which the supply of goods or services was made or completed or the date on which the payment on account referred to in points (4) and (5) of Article 220 was made, in so far as that date can be determined and differs from the date of issue of the invoice;

...'

9 Article 273 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.

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.'

#### *Portuguese law*

10 According to the order for reference, Article 36(5)(b) of the Código do IVA (VAT Code) provides that invoices must contain 'the common name of the goods or services supplied, together with specification of the information necessary to determine the applicable tax rate'.

11 Only if an invoice satisfies in particular the conditions laid down in that provision of the VAT Code is there a right, pursuant to Article 19(2)(a) and (6) of that code, to deduct the VAT shown in the invoice.

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

12 Barlis, which is established in Lisbon (Portugal), operates hotels with restaurants.

13 From 2008 to 2010 Barlis made use of the legal services of a firm of lawyers ('the legal services in question'), which were the subject of four invoices ('the invoices at issue') containing the following descriptions:

- invoice No 02170/2008 of 26 August 2008: 'Legal services rendered from 1 December 2007 until the present date';
- invoice No 32100478 of 17 December 2008: 'Fees for legal services rendered from June until the present date';
- invoice No 32101181 of 29 April 2009: 'Fees for legal services rendered until the present

date’;

– invoice No 32104126 of 2 June 2010: ‘Fees for legal services rendered from 1 November 2009 until the present date’.

14 Barlis exercised its right to deduct the VAT shown in those invoices.

15 Following a request by Barlis for reimbursement of VAT, the competent authorities opened review procedures for the years 2008 to 2011. After those checks, the authorities took the view that Barlis was not entitled to deduct the VAT relating to the legal services in question, on the ground that the descriptions in the invoices at issue, issued by Barlis’s lawyers, were insufficient. The authorities therefore proposed VAT corrections in the amount of EUR 8 689.49, representing the sums of VAT deducted in respect of those legal services.

16 Barlis was notified that it could exercise its right to a preliminary hearing, and submitted annexes giving a more detailed description of the legal services in question.

17 However, the competent authorities maintained the proposed corrections, because of the incompleteness of the invoices at issue. In their view, that lack of legal form could not be remedied by adding annexes confirming the missing information, as the annexes were not documents ‘equivalent’ to invoices. Such ‘equivalent documents’ had to satisfy, in themselves, all the requirements of Article 36(5) of the VAT Code, which was not the case with a mere annex.

18 On 31 May 2013 Barlis brought an administrative appeal against that decision, which was dismissed by decision of 25 September 2013 on the ground that the reference to ‘legal services’ in the invoices at issue did not satisfy the requirements of Article 226(6) of Directive 2006/112 or those of the national provisions implementing that directive, in that the reference gave no details of the services that had been supplied or of their individual or total quantities.

19 Following the dismissal of its administrative appeal, Barlis requested on 30 December 2013 the constitution of a single-member arbitration tribunal.

20 The referring tribunal before which the case was brought in those circumstances, the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Tax Arbitration Tribunal (Centre for Administrative Arbitration), Portugal), observes that it has to determine whether the details given in the invoices at issue satisfy the conditions of Article 36(5)(b) of the VAT Code, under which invoices must contain ‘the common name of the goods or services supplied, together with specification of the information necessary to determine the applicable tax rate’.

21 That tribunal notes, however, that the national legislation must be interpreted in conformity with Article 226 of Directive 2006/112, which lists exhaustively the details which must appear in invoices issued for VAT purposes, including, in point 6 of that provision, the ‘quantity and nature of the goods supplied or the extent and nature of the services rendered’.

22 In those circumstances, the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Tax Arbitration Tribunal (Centre for Administrative Arbitration)) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 226(6) of [Directive 2006/112] be interpreted as permitting the Tax and Customs Authority to regard as insufficient a description on an invoice which states “legal services rendered from such a date until the present date” or merely “legal services rendered until the present date”, where that body may, in accordance with the principle of collaboration, obtain the additional

information which it deems necessary to confirm the existence and detailed characteristics of the relevant transactions?’

### **Consideration of the question referred**

23 It must be observed, as a preliminary point, that the question expressly refers solely to Article 226(6) of Directive 2006/112. In order to give the referring tribunal a useful answer which will enable it to decide the dispute before it, the analysis to be performed should, however, also include Article 178(a) and Article 226(7) of Directive 2006/112. In this respect, it should be recalled that the Court’s duty is to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred by them to the Court (judgment of 16 July 2015, *Abcur*, C-544/13 and C-545/13, EU:C:2015:481, paragraph 33).

24 The referring tribunal’s question consists of two parts, which should be treated separately. By the first part of its question, the referring tribunal essentially asks whether Article 226 of Directive 2006/112 must be interpreted as meaning that invoices mentioning only ‘legal services rendered from [a date] until the present date’ or ‘legal services rendered until the present date’, such as those at issue in the main proceedings, comply with the requirements of points 6 and 7 of that article. By the second part of its question, the referring tribunal seeks to know whether Article 178(a) of Directive 2006/112 must be interpreted as precluding the national tax authorities from refusing the right to deduct VAT solely because the taxable person holds an invoice which does not satisfy the conditions required by Article 226(6) and (7) of that directive, even though those authorities have available all the necessary information for ascertaining whether the substantive conditions for the exercise of that right are satisfied.

#### *First part of the question: compliance with Article 226(6) and (7) of Directive 2006/112*

25 It should be recalled, as a preliminary point, that Article 226 of Directive 2006/112 specifies that, without prejudice to the particular provisions laid down in that directive, only the details mentioned in that article are required for VAT purposes in invoices issued pursuant to Article 220 of the directive. It follows that it is not open to Member States to make the exercise of the right to deduct VAT dependent on compliance with conditions relating to the content of invoices which are not expressly laid down by the provisions of Directive 2006/112 (see, to that effect, judgment of 15 July 2010, *Pannon Gép Centrum*, C-368/09, EU:C:2010:441, paragraphs 40 and 41).

26 In the first place, Article 226(6) of Directive 2006/112 requires the invoice to mention the extent and nature of the services rendered. The wording of that provision thus shows that it is compulsory to specify the extent and nature of the services supplied, but does not state that it is necessary to give an exhaustive description of the specific services supplied.

27 As the Advocate General observes in points 30, 32 and 46 of her Opinion, the objective of the details which must be shown in an invoice is to allow the tax authorities to monitor payment of the tax due and, if appropriate, the existence of the right to deduct VAT. It is therefore in the light of that objective that it should be examined whether invoices such as the invoices at issue in the main proceedings comply with the requirements of Article 226(6) of Directive 2006/112.

28 In the dispute in the main proceedings, while the invoices at issue describe the services rendered as ‘legal services’, the fact remains that, as the Portuguese Government stated in its written observations, that expression covers a wide range of services, including services not necessarily connected with economic activity. It follows that the words ‘legal services rendered from [a date] until the present date’ or ‘legal services rendered until the present date’ do not appear to indicate in sufficient detail the nature of the services concerned. Moreover, that

description is so general that it does not appear to disclose the extent of the services rendered, for the reasons stated by the Advocate General in points 60 to 63 of her Opinion. Consequently, the description does not a priori satisfy the conditions required by Article 226(6) of Directive 2006/112, which is for the referring tribunal to ascertain.

29 In the second place, Article 226(7) of Directive 2006/112 requires the invoice to show the date on which the supply of services was made or completed.

30 That requirement must also be interpreted in the light of the objective pursued by the imposition of required details in the invoice, such as those provided for in Article 226 of Directive 2006/112, which, as noted in paragraph 27 above, is to enable the tax authorities to monitor payment of the tax due and, if appropriate, the existence of the right to deduct VAT. The date of supply of the services which are the subject of the invoice makes it possible to check when the chargeable event for tax occurs, and hence to determine the tax provisions which must apply, from a temporal point of view, to the transaction to which that document relates.

31 In the present case, it appears from the order for reference that the legal services that were the subject of the invoices at issue in the main proceedings give rise to successive statements of account or payments. Article 64 of Directive 2006/112 provides that such supplies of services are to be regarded as being completed on expiry of the periods to which the statements of account or payments relate. Consequently, to satisfy the requirements of Article 226(7) of Directive 2006/112, it is essential that those periods are mentioned in the invoices relating to such supplies.

32 In this respect, it should be noted that the invoices at issue relating to 'legal services rendered from [a date] until the present date' appear to specify the period of the account. By contrast, one of the invoices at issue mentions only 'legal services rendered until the present date'. That invoice does not mention the date on which the period in question started, and does not therefore make it possible to determine the period to which the accounts in question relate.

33 It must therefore be considered that an invoice referring only to 'legal services rendered until the present date', without specifying any starting date of the period of account, does not satisfy the conditions required by Article 226(7) of Directive 2006/112.

34 It is, however, for the referring tribunal, should it find that the invoices at issue do not satisfy the requirements of Article 226(6) and (7) of Directive 2006/112, to ascertain whether the annexes produced by Barlis provide a more detailed description of the legal services in question in the main proceedings and may be treated as invoices by virtue of Article 219 of that directive, as documents that amend the initial invoice and refer specifically and unambiguously to it.

35 It follows from the above considerations that the answer to the first part of the question is that Article 226 of Directive 2006/112 must be interpreted as meaning that invoices mentioning only 'legal services rendered from [a date] until the present date', such as those at issue in the main proceedings, do not a priori comply with the requirements of point 6 of that article and that invoices mentioning only 'legal services rendered until the present date' do not a priori comply either with the requirements of point 6 or with those of point 7 of that article, which is, however, for the referring tribunal to ascertain.

*Second part of the question: the consequences of an invoice not satisfying the conditions required by Article 226(6) and (7) of Directive 2006/112 for the exercise of the right to deduct VAT*

36 By the second part of its question, the referring tribunal seeks essentially to establish the consequences of a failure to comply with Article 226(6) and (7) of Directive 2006/112 for the exercise of the right to deduct VAT.

37 It should be recalled that, according to settled case-law of the Court, the right of taxable persons to deduct from the VAT which they are liable to pay the VAT due or paid on goods purchased and services received by them as inputs is a fundamental principle of the common system of VAT established by EU legislation (judgment of 13 February 2014, *Maks Pen*, C?18/13, EU:C:2014:69, paragraph 23 and the case-law cited).

38 The Court has repeatedly held that the right to deduction of VAT provided for in Article 167 et seq. of Directive 2006/112 is an integral part of the VAT scheme and in principle may not be limited. The right is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (see, to that effect, judgment of 13 February 2014, *Maks Pen*, C?18/13, EU:C:2014:69, paragraph 24 and the case-law cited).

39 The deduction system is intended to relieve the operator entirely of the burden of the VAT due or paid in the course of all his economic activities. The common system of VAT therefore ensures that all economic activities, whatever their purpose or results, provided that they are in principle themselves subject to VAT, are taxed in a neutral way (judgment of 22 October 2015, *PPUH Stehcemp*, C?277/14, EU:C:2015:719, paragraph 27 and the case-law cited).

40 As regards the substantive conditions which must be met in order for the right to deduct VAT to arise, it is apparent from Article 168(a) of Directive 2006/112 that the goods or services relied on to give entitlement to that right must be used by the taxable person for the purposes of his own taxed output transactions and that those goods or services must be supplied by another taxable person as inputs (see, to that effect, judgment of 22 October 2015, *PPUH Stehcemp*, C?277/14, EU:C:2015:719, paragraph 28 and the case-law cited).

41 As regards the formal conditions for the exercise of that right, it is apparent from Article 178(a) of Directive 2006/112 that the exercise of the right is subject to holding an invoice drawn up in accordance with Article 226 of that directive (see, to that effect, judgments of 1 March 2012, *Kopalnia Odkrywkowa Polski Trawertyn P. Granatowicz, M. W?siewicz*, C?280/10, EU:C:2012:107, paragraph 41, and of 22 October 2015, *PPUH Stehcemp*, C?277/14, EU:C:2015:719, paragraph 29).

42 The Court has held that the fundamental principle of the neutrality of VAT requires deduction of input VAT to be allowed if the substantive requirements are satisfied, even if the taxable persons have failed to comply with some formal conditions. Consequently, where the tax authorities have the information necessary to establish that the substantive requirements have been satisfied, they 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, to that effect, judgments of 21 October 2010, *Nidera Handelscompagnie*, C?385/09, EU:C:2010:627, paragraph 42; of 1 March 2012, *Kopalnia Odkrywkowa Polski Trawertyn P. Granatowicz, M. W?siewicz*, C?280/10, EU:C:2012:107, paragraph 43, and of 9 July 2015, *Salomie and Oltean*, C?183/14, EU:C:2015:454, paragraphs 58 and 59 and the case-law cited).

43 It follows that the tax authorities cannot refuse the right to deduct VAT on the sole ground that an invoice does not satisfy the conditions required by Article 226(6) and (7) of Directive 2006/112 if they have available all the information to ascertain whether the substantive conditions for that right are satisfied.

44 In this respect, the authorities cannot restrict themselves to examining the invoice itself. They must also take account of the additional information provided by the taxable person. That conclusion is confirmed by Article 219 of Directive 2006/112, which treats as an invoice any document or message that amends and refers specifically and unambiguously to the initial invoice.

45 In the dispute in the main proceedings, it is therefore for the referring tribunal to take into account all the information included in the invoices at issue and in the annexes produced by Barlis in order to ascertain whether the substantive conditions for its right to deduct VAT are satisfied.

46 In this connection, it must be pointed out, first, that it is for the taxable person seeking deduction of VAT to establish that he meets the conditions for eligibility (see, to that effect, judgment of 18 July 2013, *Evita-K*, C-78/12, EU:C:2013:486, paragraph 37). The tax authorities may thus require the taxable person himself to produce the evidence they consider necessary for determining whether or not the deduction requested should be granted (see, to that effect, judgment of 27 September 2007, *Twoh International*, C-184/05, EU:C:2007:550, paragraph 35).

47 Secondly, it must be stated that the Member States have power to lay down penalties for failure to comply with the formal conditions for the exercise of the right to deduct VAT. In accordance with Article 273 of Directive 2006/112, the Member States can adopt measures to ensure the correct collection of VAT and to prevent evasion, provided that those measures do not go further than is necessary to attain those objectives and do not undermine the neutrality of VAT (see, to that effect, judgment of 9 July 2015, *Salomie and Oltean*, C-183/14, EU:C:2015:454, paragraph 62).

48 In particular, EU law does not prevent the Member States from imposing, where appropriate, a fine or financial penalty proportionate to the seriousness of the offence, in order to penalise non-compliance with formal requirements (see, to that effect, judgment of 9 July 2015, *Salomie and Oltean*, C-183/14, EU:C:2015:454, paragraph 63 and the case-law cited).

49 It follows from the above considerations that the answer to the second part of the question is that Article 178(a) of Directive 2006/112 must be interpreted as precluding the national tax authorities from refusing the right to deduct VAT solely because the taxable person holds an invoice which does not satisfy the conditions required by Article 226(6) and (7) of that directive, even though those authorities have available all the necessary information for ascertaining whether the substantive conditions for the exercise of that right are satisfied.

## **Costs**

50 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 (Fourth Chamber) hereby rules:

**Article 226 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that invoices mentioning only ‘legal services rendered from [a date] until the present date’, such as those at issue in the main proceedings, do not a priori comply with the requirements of point 6 of that article and that invoices mentioning only ‘legal services rendered until the present date’ do not a priori**



**comply either with the requirements of point 6 or with those of point 7 of that article, which is, however, for the referring tribunal to ascertain.**

**Article 178(a) of Directive 2006/112 must be interpreted as precluding the national tax authorities from refusing the right to deduct value added tax solely because the taxable person holds an invoice which does not satisfy the conditions required by Article 226(6) and (7) of that directive, even though those authorities have available all the necessary information for ascertaining whether the substantive conditions for the exercise of that right are satisfied.**

[Signatures]

\* Language of the case: Portuguese.