

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

16 June 2016 (\*)

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Articles 18(c), 184 and 187 — Taxable transactions — Cessation of the taxable economic activity — Retention of goods on which VAT became deductible — Adjustment of deductions — Adjustment period — Taxation pursuant to Article 18(c) of Directive 2006/112 on expiry of the adjustment period)

In Case C-229/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), made by decision of 5 February 2015, received at the Court on 19 May 2015, in the proceedings

**Minister Finansów**

v

**Jan Mateusiak,**

THE COURT (Tenth Chamber),

composed of F. Biltgen, President of the Chamber, E. Levits (Rapporteur) and M. Berger, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

- Jan Mateusiak, by himself,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Greek Government, by K. Georgiadis and K. Karavasili, acting as Agents,
- the European Commission, by R. Lyal and M. Owsiany-Hornung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 March 2016,

gives the following

**Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 18(c) and Article 187 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; ‘the VAT Directive’).

2 The request has been made in proceedings between the Minister Finansów (Minister for

Finance) and Mr Jan Mateusiak concerning the levying of value added tax (VAT) on immovable property owned by the latter upon the cessation of his economic activity.

## **Legal context**

### *EU law*

3 Article 18 of the VAT Directive provides:

‘Member States may treat each of the following transactions as a supply of goods for consideration:

- (a) the application by a taxable person for the purposes of his business of goods produced, constructed, extracted, processed, purchased or imported in the course of such business, where the VAT on such goods, had they been acquired from another taxable person, would not be wholly deductible;
- (b) the application of goods by a taxable person for the purposes of a non-taxable area of activity, where the VAT on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with point (a);
- (c) with the exception of the cases referred to in Article 19, the retention of goods by a taxable person, or by his successors, when he ceases to carry out a taxable economic activity, where the VAT on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with point (a).’

4 Under the first paragraph of Article 19 of that directive:

‘In the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and that the person to whom the goods are transferred is to be treated as the successor to the transferor.’

5 Article 168 of the VAT Directive states 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;

...’

6 Article 168a(1) of the VAT Directive provides:

‘In the case of immovable property forming part of the business assets of a taxable person and used both for purposes of the taxable person’s business and for his private use or that of his staff, or, more generally, for purposes other than those of his business, VAT on expenditure related to this property shall be deductible in accordance with the principles set out in Articles 167, 168, 169 and 173 only up to the proportion of the property’s use for purposes of the taxable person’s business.

By way of derogation from Article 26, changes in the proportion of use of immovable property referred to in the first subparagraph shall be taken into account in accordance with the principles

provided for in Articles 184 to 192 as applied in the respective Member State.’

7 Article 184 of the VAT Directive provides:

‘The initial deduction shall be adjusted where it is higher or lower than that to which the taxable person was entitled.’

8 Article 187 of the VAT Directive is worded as follows:

‘1. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured.

Member States may, however, base the adjustment on a period of five full years starting from the time at which the goods are first used.

In the case of immovable property acquired as capital goods, the adjustment period may be extended up to 20 years.

2. The annual adjustment shall be made only in respect of one fifth of the VAT charged on the capital goods, or, if the adjustment period has been extended, in respect of the corresponding fraction thereof.

The adjustment referred to in the first subparagraph shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired, manufactured or, where applicable, used for the first time.’

#### *Polish law*

9 Article 14(1)(1) and (2), Article 14(4) to (6) and Article 14(8) of the ustawa o podatku od towarów i usług (the Polish Law on goods and services tax) of 11 March 2004 (consolidated text Dz. U. 2011, No 177, poz. 1054) in the version applicable to the main proceedings (the ‘Law on VAT’) provides:

‘1. Goods of a person’s own manufacture and goods which, following acquisition, were not the object of the supply of goods, shall be subject to the tax where:

(1) a civil law or commercial company not having legal personality is dissolved;

(2) a taxable person referred to in Article 15, who is a natural person, ceases to carry out taxable activity and is required, under Article 96(6), to notify the director of the tax authorities thereof.

...

4. Paragraphs 1 and 3 shall apply to goods in relation to which there was a right to reduce the amount of tax due by the amount of input tax.

5. In the cases referred to in paragraphs 1 and 3, taxable persons shall be required to draw up a physical inventory of goods as at the date on which the company was dissolved or taxable activity was ceased, hereinafter referred to as the ‘physical inventory’. Taxable persons shall be required to attach information about the physical inventory drawn up, the value established on the basis thereof, and the amount of tax owed, to the tax return submitted for the period up to the date on which the company was dissolved or taxable activity was ceased.

6. In the case referred to in paragraph 1 the tax liability arises on the date on which the

company is dissolved or taxable activity is ceased.

...

8. The taxable amount shall be the value of the goods to be included in the physical inventory, established pursuant Article 29(10).'

10 Article 29(10) of the Law on VAT states that 'in the case of the supply of goods referred to in Article 7(2) the taxable amount shall be the acquisition price of the goods (excluding tax), and where there is no acquisition price, the cost price established at the time those goods were supplied.'

11 Under Article 91(1) to (4) of the Law on VAT:

'1. Following completion of the year in which the taxable person had the right to reduce the amount of tax due by the amount of input tax referred to in Article 86(1), he shall be required in respect of the completed tax year to adjust the amount of tax deducted pursuant to Article 90(2) to (10), having regard to the proportion calculated in the manner laid down in Article 90(2) to (6) or (10) of the provisions adopted pursuant to Article 90(11) and (12).

2. In the case of goods and services which are treated by the taxable person as forming part of his depreciable tangible and intangible fixed assets, under the provisions applying to income and corporation tax, and also land and rights of perpetual usufruct over land, which are treated as forming part of the tangible and intangible fixed assets of the acquirer, with the exception of those whose book value does not exceed [Polish zlotys (PLN)] 15 000 [(about EUR 3 417)], the taxable person shall effect the adjustment referred to in paragraph 1 within 5 years from the year in which they were brought into use and, in the case of immovable property and rights of perpetual usufruct over land, within 10 years. The annual adjustment in the case referred to in the first sentence shall concern one fifth and, in the case of immovable property and perpetual usufruct over land, one tenth of the amount of tax on their acquisition or erection. In the case of tangible and intangible fixed assets, whose book value does not exceed PLN 15 000 [(about EUR 3 417)], paragraph 1 shall apply *mutatis mutandis* with the adjustment being effected following completion of the year in which they were brought into use.

...

3. The adjustments referred to in paragraphs 1 and 2 shall be effected in the tax return submitted for the first accounting period of the year following the tax year in respect of which the adjustment is effected, and, where economic activity is ceased, in the tax return for the final accounting period.

4. Where, during the period of adjustment referred to in paragraph 2 sales of goods and services referred to in paragraph 2 occur, or those goods are taxed pursuant to Article 14, they shall be deemed to be still used for the purpose of taxed activity of that taxable person until the end of the period of adjustment.'

12 Article 96(6) of the Law on VAT states that 'where a taxable person registered as a taxable person for the purposes of VAT ceases to carry out taxable activity, he shall be required to notify the director of the tax authorities thereof; that notification shall provide the grounds for the director of the tax authorities removing the taxable person from the register as a taxable person for the purposes of VAT'.

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

13 Between 1997 and 1999, Mr Mateusiak made an investment consisting of the construction of a residential and commercial building with a footprint area of 108.7 m<sup>2</sup> and a total usable floor space of 357.6 m<sup>2</sup> (including 87.8 m<sup>2</sup> allocated to the provision of services) ('the part of the building allocated to services'). On 26 July 1999 he was granted permission to use the building.

14 Mr Mateusiak deducted the input tax contained in the original invoices for the purchases of building materials, labour and other items which were related solely to the part of the building allocated to the provision of an activity subject to VAT, namely a notary's office.

15 On 10 August 1999 the part of the building allocated to the provision of services was entered in the register of fixed assets held for the purposes of income tax for natural persons, and was brought into use for the purposes of a non-agricultural economic activity. The book value of the fixed asset named the 'Office Building' amounted to PLN 101 525.70.

16 On 14 January 2013 Mr Mateusiak lodged an application for an individual tax ruling with the director of the Tax Office in Łódź (Izba Skarbowa w Łodzi), acting under the authority of the Minister for Finance ('the tax authority'), asking whether or not a winding-up inventory drawn up with a view to winding up the economic activity carried out by a natural person, who is at the same time an active taxable person for the purposes of VAT, should include the value of that person's fixed assets in the form of immovable property owned by that person on the date of the winding-up. Should the answer be in the affirmative, the applicant wished to know what value should be included in the taxable amount for the purposes of VAT on the date on which the economic activity in question had ceased.

17 According to Mr Mateusiak, the value of the fixed assets that he owned should not be taken into account since taking them into account would infringe the principle of neutrality of VAT, inasmuch as the cessation took place after the end of the adjustment period, which, in the case of immovable property, is 10 years. In the event that his point of view was not followed, Mr Mateusiak considered that it must be found that VAT was to be applied only to the part of the building which was used for the purposes of the economic activity carried out by including in the taxable amount the cost price, if it is lower than the current market price.

18 With reference, inter alia, to Article 14(1)(2), Article 14(4) and (8) and Article 29(10) of the Law on VAT, the tax authority concluded that taxation of the goods in connection with the cessation of taxable activity was justified by the structure of the VAT itself as a consumption tax, and that it was also an expression of the principle of neutrality of that tax. All goods on whose acquisition input tax was deducted must be subject to VAT in order to offset that deduction.

19 The appeal lodged by Mr Mateusiak before the Wojewódzki Sąd Administracyjny w Lublinie (Regional Administrative Court of the province of Lublin, Poland) against the individual tax ruling was upheld in a judgment of 16 October 2013. That court held that Articles 14 and 91 of the Law on VAT should be read together since the legislature had established a correlation between the taxation of fixed assets on the winding-up of activity and the right to deduct the part of the input tax on the acquisition thereof which was not deducted during the adjustment period. On expiry of the adjustment period, the taxable person's fixed assets at the time he winds up his activity must not be subject to tax nor included in the winding-up inventory, since the time laid down by law for adjusting input tax on the acquisition thereof, which arises from the time established for consuming those fixed assets in the taxable person's activity, has passed.

20 The Minister for Finance brought an appeal on a point of law before the Naczelny Sąd

Administracyjny (Supreme Administrative Court, Poland). The Naczelny Sąd Administracyjny (Supreme Administrative Court) questions whether, even after expiry of the adjustment period laid down for a specific type of goods, a retained fixed asset pursuant to Article 18(c) of the VAT Directive must be subject to tax when the economic activity has ceased.

21 The court states that once the time laid down by law for consuming the capital goods for the purposes of the taxable person's economic activity, expressed by the adjustment period (Article 187 of the VAT Directive), has passed, it could be assumed that during the period in which that fixed asset was used in his taxable activity, the taxable person 'consumed' the tax deducted in connection with its acquisition; the tax deducted is connected throughout the period of its use (adjustment) with the tax owed, generated by that fixed asset in the taxable person's economic activity.

22 In those circumstances, the Naczelny Sąd Administracyjny (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 18(c) of the [VAT Directive] be interpreted as meaning that, on expiry of the adjustment period referred to in Article 187 of the directive, a taxable person's fixed assets upon the acquisition of which he deducted VAT, should not be subject to tax and included in the winding-up inventory at the time he ceases his activity, if the period laid down in law for adjusting the input tax on the acquisition thereof, which arises from the estimated period for using those assets in the taxable person's economic activity, has passed, or as meaning that the fixed assets are subject to tax at the time the taxable person ceases his economic activity, regardless of the adjustment period?'

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

23 By its question, the referring court asks, in essence, whether Article 18(c) of the VAT Directive must be interpreted as meaning that, when a taxable person ceases to carry out a taxable economic activity, the retention of goods by that taxable person, where VAT on such goods became deductible upon their acquisition, can be treated as a supply of goods for consideration, and be subject to VAT if the adjustment period laid down in Article 187 of the VAT Directive has passed.

24 As a preliminary point, it should be borne in mind that, according to the structure of the system introduced by the VAT Directive, input taxes on goods or services used by a taxable person for his taxable transactions may be deducted. The deduction of input taxes is linked to the collection of output taxes. Where goods or services acquired by a taxable person are used for the purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected and no input tax deducted. However, where goods or services are used for the purposes of transactions that are taxable as outputs, deduction of the input tax on them is required in order to avoid double taxation (see, to that effect, judgment of 30 March 2006 in *Uudenkaupungin kaupunki*, C-184/04, EU:C:2006:214, paragraph 24, and order of 5 June 2014 in *Gmina Międzyzdroje*, C-500/13, EU:C:2014:1750, paragraph 19).

25 In this respect, under Article 18(c) of the VAT Directive, the Member States may treat the retention of goods by a taxable person, or by his successors, in the event of cessation of a taxable economic activity, as a supply of goods for consideration, where the VAT on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with Article 18(a). Article 18(c) of the VAT Directive thus authorises Member States to adopt a special provision for situations in which a taxable person ceases to trade (see judgment of 17 May 2001 in *Fischer and Brandenstein*, C-322/99 and C-323/99, EU:C:2001:280, paragraph 86).

26 As noted by the referring court, the Republic of Poland exercised the option granted by Article 18(c) of the VAT Directive. The court asks, however, whether the provision implementing Article 18(c) of the VAT Directive is to be applied on expiry of the adjustment period which, in accordance with the third subparagraph of Article 187(1) of the VAT Directive, may be extended up to 20 years in the case of immovable property acquired as capital goods, and, according to the referring court, in Poland that period is 10 years.

27 In that regard, it must be noted that the main objective of Article 18(c) of the VAT Directive is to avoid a situation where the final consumption of goods on which the VAT became deductible is untaxed following the cessation of the taxable economic activity, regardless of the causes or circumstances of that cessation (judgment of 8 May 2013 in *Marinov*, C-142/12, EU:C:2013:292, paragraph 27).

28 The adjustment mechanism provided for in the VAT Directive is intended to enhance the precision of deductions so as to ensure the neutrality of VAT, with the result that transactions carried out at an earlier stage continue to give rise to the right to deduct only to the extent that they are used to make supplies subject to VAT. That mechanism thus aims to establish a close and direct relationship between the right to deduct input VAT paid and the use of the goods or services concerned for taxable output transactions (judgment of 18 October 2012 in *TETS Haskovo*, C-234/11, EU:C:2012:644, paragraphs 30 and 31).

29 So far as concerns the existence of an obligation to make an adjustment to an input VAT deduction, Article 185(1) of the VAT Directive establishes the principle that such an adjustment must be made, inter alia, where, after the VAT return is made, some change occurs in the factors used to determine the amount of the deduction (judgments of 18 October 2012 in *TETS Haskovo*, C-234/11, EU:C:2012:644, paragraph 32, and 13 March 2014 in *FIRIN*, C-107/13, EU:C:2014:151, paragraph 51).

30 The period laid down in Article 187 of the VAT Directive for adjustment of deductions makes it possible to avoid inaccuracies in the calculation of deductions and unjustified advantages or disadvantages for a taxable person where, in particular, changes in the factors initially taken into consideration in order to determine the amount of deductions occur after the declaration has been made. The likelihood of such changes is particularly significant in the case of capital goods, which are often used over a number of years, during which the purposes to which they are put may alter (see, to that effect, judgment of 30 March 2006 in *Uudenkaupungin kaupunki*, C-184/04, EU:C:2006:214, paragraph 25, and order of 5 June 2014 in *Gmina Międzyzdroje*, C-500/13, EU:C:2014:1750, paragraph 20).

31 It follows that the purpose of tax being levied on the retention of goods on which VAT became deductible pursuant to Article 18(c) of the VAT Directive is indeed similar to the purpose of the adjustment mechanism in so far as it is a matter, first, of avoiding giving an unjustified economic advantage to a taxable person compared to a final consumer who buys the goods and pays VAT on them, and, secondly, of ensuring a correspondence between deduction of input tax and charging of output tax (see, to that effect, by analogy, judgment of 14 September 2006 in *Wollny*

, C-72/05, EU:C:2006:573, paragraphs 35 and 36 and the case-law cited).

32 However, the similarity of those objectives does not mean that the period laid down for the adjustment of a deduction by means of instalment payments over several years, pursuant to Articles 184 to 187 of the VAT Directive, may be treated as a period beyond which taxation pursuant to Article 18(c) of the directive is no longer possible.

33 It follows, first, from Article 18(c) of the VAT Directive that the retention of goods by a taxable person, when he ceases to carry out a taxable economic activity, may be treated as a supply of goods for consideration, where the VAT on those goods became wholly or partly deductible upon their acquisition.

34 Article 18(c) of the VAT Directive provides for no other condition, in particular in respect of a period of time following acquisition during which there is to be a retention of goods after cessation of the activity in order for it to be subject to tax.

35 Moreover, in so far as concerns its application, Article 18(c) does not refer to the provisions on the adjustment of deduction laid down in Articles 184 to 192 of the VAT Directive, unlike the second subparagraph of Article 168a(1) of the directive, which refers to those provisions for the taxation of immovable property for private use under Article 26 of the directive.

36 Finally, the adjustment of deductions, which is made, *inter alia*, where, after the VAT return is made, some change occurs in the factors used to determine the amount of VAT, and which aims to ensure that the deductions made closely reflect the use of assets for business purposes, is a retroactive corrective mechanism, as the Advocate General observed in point 28 of her Opinion.

37 However, the taxation provided for in Article 18(c) of the VAT Directive is not based on the premiss that, where the taxable economic activity has ceased, the VAT that becomes wholly or partly deductible upon the acquisition of goods that are retained is higher or lower than that to which the taxable person was entitled, but rather on the occurrence of a new taxable transaction at the time the economic activity ceases.

38 The taxation provided for in Article 18(c) of the VAT Directive takes into account changes to the value of business assets throughout the duration of their use for business purposes because, in accordance with Article 74 of the VAT Directive, for transactions such as those referred to in Article 18(c) of the VAT Directive, the taxable amount is to be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time when those transactions take place. In the event of the cessation of the taxable economic activity, the taxable amount of the transaction is the value of the goods in question determined at the time of that cessation, which therefore takes into account the change in the value of those assets between their acquisition and the cessation (see, in particular, judgment of 8 May 2013 in *Marinov*, C-142/12, EU:C:2013:292, paragraph 33).

39 In order to achieve the objective of Article 18(c) of the VAT Directive, which is to avoid a situation where the final consumption of goods on which the VAT became deductible is untaxed following the cessation of taxable economic activity, and to effectively eliminate any inequality for VAT purposes between consumers who acquire their goods from another taxable person and those who acquire their goods in the course of their business, taxation due under Article 18(c) of the VAT Directive must take place, as the Advocate General observed in point 34 of her Opinion, where goods on which VAT became deductible still have a residual value when the taxable economic activity ceases, regardless of the period of time between the date of purchase of those goods and the date on which the activity ceases.



40 In view of the foregoing, the answer to the question asked is that Article 18(c) of the VAT Directive must be interpreted as meaning that, when a taxable person ceases to carry out a taxable economic activity, the retention of goods by that taxable person, where VAT on such goods became deductible upon their acquisition, can be treated as a supply of goods for consideration and be subject to VAT if the adjustment period laid down in Article 187 of the VAT Directive has passed.

### **Costs**

41 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 (Tenth Chamber) hereby rules:

**Article 18(c) of Council 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, must be interpreted as meaning that, when a taxable person ceases to carry out a taxable economic activity, the retention of goods by that taxable person, where value added tax on such goods became deductible upon their acquisition, can be treated as a supply of goods for consideration and be subject to value added tax if the adjustment period laid down in Article 187 of Directive 2006/112, as amended by Directive 2009/162, has passed.**

[Signatures]

\* Language of the case: Polish.