Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

26 April 2017 (*)

(Reference for a preliminary ruling — Plea alleging infringement of EU law raised by the Court of its own motion — Principles of equivalence and effectiveness — Common system of value added tax — Directive 2006/112/EC — Right to deduct input tax — Reverse charge system — Article 199(1)(g) — Application only in the case of immovable property — Undue payment of the tax by the purchaser of property to the seller as a result of an incorrectly drawn up invoice — Tax authority's decision holding that the property purchaser has an outstanding tax liability, refusing payment of the deduction sought by the purchaser, and imposing a penalty tax)

In Case C?564/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kecskeméti közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Kecskemét, Hungary), made by decision of 7 October 2015, received at the Court on 4 November 2015, in the proceedings

Tibor Farkas

v

Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Adó F?igazgatósága

THE COURT (Fourth Chamber),

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

Advocate General: M. Bobek,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 7 September 2016,

after considering the observations submitted on behalf of:

– the Hungarian Government, by M.M. Tátrai, M.Z. Fehér and G. Koós, acting as Agents,

– the Estonian Government, by K. Kraavi-Käerdi, acting as Agent,

– the European Commission, by L. Lozano Palacios and L. Havas, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 November 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('Directive 2006/112'), and the principles of fiscal neutrality and proportionality.

2 The request has been made in proceedings between Mr Tibor Farkas and the Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Adó F?igazgatósága (Dél-alföld Regional Tax Directorate, part of the National Treasury and Customs Authority, Hungary, 'the Hungarian tax authority') concerning the latter's decision that Mr Farkas has an outstanding tax liability and imposing a tax penalty on him as a result of the non-application of national provisions on the reverse charge system.

Legal context

EU law

3 Recital 42 of Directive 2006/112 states: 'Member States should be able, in specific cases, to designate the recipient of supplies of goods or services as the person liable for payment of VAT. This should assist Member States in simplifying the rules and countering tax evasion and avoidance in identified sectors and on certain types of transactions.'

4 Article 167 of that directive provides:

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

5 Article 168(a) of Directive 2006/112 states:

'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 [value added tax (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 178(a) and (f) of Directive 2006/112 provides:

'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 Sections 3 to 6 of Chapter 3 of Title XI;

...

(f) when required to pay VAT as a customer where Articles 194 to 197 or Article 199 apply, he must comply with the formalities as laid down by each Member State.'

7 Under Article 193 of the Directive, VAT is to be payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194 to 199 and Article 202 of that directive.

8 Article 199(1)(g) of the directive provides:

'Member States may provide that the person liable for payment of VAT is the taxable person to

whom any of the following supplies are made:

...

(g) the supply of immovable property sold by a judgment debtor in a compulsory sale procedure.

...'

9 Article 226(11a) 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:

...

(11a) where the customer is liable for the payment of the VAT, the mention "Reverse charge".'

10 According to Article 395 of that directive:

'1. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

...

2. A Member State wishing to introduce the measure referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information. ...

Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States.

3. Within three months of giving the notification referred to in the second subparagraph of paragraph 2, the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.

4. The procedure laid down in paragraphs 2 and 3 shall, in any event, be completed within eight months of receipt of the application by the Commission.'

Hungarian law

11 Paragraph 142 of the általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law CXXVII of 2007 on value added tax), in the version applicable to the main proceedings ('the Law on VAT'), provides the following:

'1. The tax shall be paid by the taxable person receiving the goods or services:

...

(g) in the case of the supply of capital goods of the business, and the supply of other goods or services with an open market value of Hungarian forints 100 000 [(HUF) (approximately EUR 324)] at the time of supply, if the taxable person supplying the goods or services is the subject of bankruptcy proceedings or any similar insolvency proceedings in which it has been definitively established that he is unable to pay his debts;

...

7. Where sub-paragraph (1) applies, the supplier of the goods or services shall issue an invoice which does not indicate either the amount of the output VAT or the rate referred to in Paragraph 83.

...'

12 Paragraph 169(n) of the Law on VAT provides:

'The invoice shall be required to contain the following text:

...

(n) where the customer is liable to pay the VAT, the words "Reverse charge";

...'

13 Paragraph 170(1) and (2) of the adózás rendjér?l szóló 2003. évi XCII. törvény (Law XCII of 2003 on the rules governing taxation), in the version applicable to the facts of the main proceedings ('the Law on the Tax Procedure Code') provides:

'1. If the tax payment is insufficient, this shall give rise to a tax penalty. The amount of the penalty, save as otherwise provided for in this law, shall be 50% of the unpaid amount. The amount of the penalty shall be 200% of the unpaid amount if the difference compared with the amount to be paid is connected with the concealment of income, or the falsification or destruction of evidence, accounting ledgers or registers. A tax penalty shall also be imposed by the tax authority where the taxpayer makes an application, without being entitled to do so, for a tax refund or aid, or makes a declaration relating to an asset, aid or refund, and the authority has found that the taxpayer has no such entitlement before allocation. In such a situation, the penalty shall be based on the amount wrongly claimed.

2. The difference in the tax payable by the taxpayer, in the case of a reverse charge, is to be regarded as insufficient payment of the tax only where that difference was not paid before the due date, or where the taxpayer received budgetary aid. ...'

14 Under Paragraph 171 of the Law on the Tax Procedure Code:

'1. The amount of the fine may be reduced, or even remitted, either *ex officio* or on request, in exceptional circumstances which lead to the conclusion that the taxable person, or the taxable person's representative, employee, member or agent responsible for the tax liability, acted with the discernment that could reasonably have been expected from him in those particular circumstances. The reduction of the fine should be made by weighing up all the circumstances of the case in question, in particular the size of the tax liability, the circumstances of how it arose, and the seriousness and frequency of the taxable person's unlawful conduct (act or omission).

2. There are no grounds for reducing the fine, whether *ex officio* or on request, where the tax liability is connected with the concealment of revenue, or the falsification or destruction of

evidence, accounts or registers.

...’

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

15 As part of an electronic auction organised by the tax authorities, Mr Farkas purchased a mobile hangar from a limited liability company with an outstanding tax liability. The seller in question issued the invoice, which included the VAT relating to that transaction, in accordance with the rules applicable to the ordinary tax system. When Mr Farkas paid the auction selling price, he included the VAT indicated by the seller, who paid that tax to the Hungarian tax authority.

16 Mr Farkas deducted the output VAT recorded in that invoice. The Nemzeti Adó- és Vámhivatal Bács-Kiskun Megyei Adóigazgatósága (the Bács-Kiskun Provincial Tax Directorate, part of the National Treasury and Customs Authority, Hungary) then carried out checks on the refunds requested by Mr Farkas in the VAT declarations for the fourth quarter of 2012. That tax authority found that the rules governing the reverse charge system, for the purposes of Paragraph 142(1)(g) of the Law on VAT, according to which it fell to Mr Farkas, as purchaser of the property, to pay the VAT directly to the Treasury, had not been complied with. By decision of 11 July 2014, confirmed by decision of 7 November 2014, the Hungarian tax authority consequently found that Mr Farkas was liable for the tax difference of HUF 744 000 (approximately EUR 2 400), rejected his request for a refund of the VAT paid to the vendor in question and imposed a tax penalty in the sum of HUF 372 000 (approximately EUR 1 200).

17 Mr Farkas claims that the Hungarian tax authority deprived him of his right to deduct VAT as a result of a formal defect, that is to say, the invoice in question had been issued in accordance with the ordinary tax system, rather than the reverse charge system, and thus infringed EU law. He submits that the decision making him liable for the tax difference is unjustified because the seller in question paid the VAT in question to the Treasury. Mr Farkas brought an action before the referring court in order to ask the Court of Justice whether the refusal of his right to make a deduction is compatible with EU law.

18 The referring court takes the view that the Hungarian tax authority did not deny Mr Farkas his right to deduct VAT, but required him to pay the VAT due in accordance with the rules of the reverse charge system, pursuant to Paragraph 142(1)(g) of the Law on VAT. The difference in tax for which he is liable corresponds to the VAT indicated on the invoice for the transaction in question. According to the referring court, following the decisions of the Hungarian tax authority, although Mr Farkas paid the VAT to the seller in question, he is treated as being liable to the Treasury. Thus, since the Hungarian tax authority does not dispute his right to deduct the VAT paid, it deducted from the amount which he is seeking to have refunded the tax difference which they consider him to be liable for. Since the two sums are equal, they cancel each other out. The referring court also states that the seller paid the VAT to the Treasury, so that the Treasury suffered no loss as a result of the fact that the invoice in question was wrongly issued under the ordinary tax system, instead of the reverse charge system. In addition, according to that court, there is no indication of any tax evasion or of an intention to obtain a tax advantage.

19 The referring court considers that, in practice, the decision of the Hungarian tax authority effectively prevents Mr Farkas from exercising his right to make a deduction. Bearing in mind that, in accordance with Directive 2006/112 and the Court’s case-law, the right to deduct VAT may be denied only where tax evasion has been proven, that decision does not appear to be proportionate to the aim which the reverse charge procedure seeks to achieve.

20 In those circumstances, the Kecskeméti közigazgatási és munkaügyi bíróság

(Administrative and Labour Court, Kecskemét, Hungary) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) Is a practice of the tax authority, based on the provisions of the Law on VAT, compatible with the provisions of Directive 2006/112, in particular the principle of proportionality with the objectives of fiscal neutrality and the prevention of tax evasion, if, by that practice, that authority declares that the purchaser of an item of property (or recipient of a service) is liable for a tax difference in a situation in which the seller of the property (or supplier of the service) issues an invoice in accordance with the ordinary tax system for a transaction to which the reverse charge procedure applies and declares and pays to the Treasury the tax relating to that invoice, and the purchaser of the item of property (or recipient of the service), for his part, deducts the VAT paid to the issuer of the invoice, even though he may not exercise his right to deduct the VAT declared as a tax difference?

(2) Is the imposition of a penalty for selecting an incorrect method of taxation in the case of a declaration of a tax difference, which also entails the imposition of a tax fine of 50%, proportionate where the Treasury has not incurred any loss of revenue and there is no evidence of abuse?’

Consideration of the questions referred

Preliminary observations

21 It is apparent from the order for reference that the transaction at issue in the main proceedings involves the purchase by Mr Farkas of a mobile hangar at an electronic auction organised by the national tax authorities. Pursuant to Paragraph 142(1)(g) of the Law on VAT which, according to the referring court, transposes Article 199(1)(g) of Directive 2006/112, those authorities considered that that transaction was subject to the reverse charge mechanism and demanded that Mr Farkas pay the VAT relating to that sale, whilst imposing a tax penalty on him.

22 In response to a question asked by the Court at the hearing, the Hungarian Government indicated that the transaction at issue in the main proceedings concerns the delivery of movable property and that Paragraph 142(1)(g) of the Law on VAT applies to movable and immovable property alike.

23 In that regard, it should be noted that, under Article 193 of Directive 2006/112, VAT is payable by any taxable person carrying out a taxable supply of goods, except where it is payable by another person in the cases referred to in Articles 194 to 199 and Article 202 of that directive. Under Article 199(1)(g) of Directive 2006/112, Member States may provide that a taxable person who is supplied with immovable property sold by a judgment debtor in a compulsory sale procedure will be the person liable for the VAT.

24 It follows from recital 42 of Directive 2006/112 that the objective of Article 199(1)(g) is to enable Member States to introduce a reverse charge mechanism in certain sectors or for certain transactions in order to simplify the rules and counter tax evasion and avoidance. That provision thus allows the tax authorities to collect VAT imposed on the transactions at issue in cases where the debtor’s ability to pay that tax is compromised (judgment of 13 June 2013, *Promociones y Construcciones BJ 200*, C?125/12, EU:C:2013:392, paragraph 28).

25 The Court has already held that Article 199(1)(g) of Directive 2006/112 constitutes an exception to the principle set out in Article 193 of that directive according to which VAT is payable by any taxable person carrying out a taxable supply of goods or services, and must therefore be interpreted strictly. Article 199 allows Member States to introduce a reverse charge mechanism, in the situations referred to in paragraphs 1(a) to (g) of that article, whereby the person liable for the

payment of VAT is the taxable person who is the recipient of the transaction subject to VAT (see, to that effect, judgment of 13 June 2013, *Promociones y Construcciones BJ 200*, C?125/12, EU:C:2013:392, paragraphs 23 and 31).

26 As the Advocate General made clear in point 28 of his Opinion, the fact that the reverse charge mechanism is an exception to the principle laid down in Article 193 of Directive 2006/112 means that derogations from that principle should be allowed only if they are expressly provided for in that directive.

27 Article 199(1)(g) of Directive 2006/112 refers only to immovable property and not movable property. Therefore, the sale of movable property in an auction, such as the one at issue in the main proceedings, falls outside its scope.

28 It is true that Article 395 of Directive 2006/112 provides that Member States are able to request the right to introduce special measures for derogation from the provisions of that directive in order to simplify the procedure for collecting VAT and to prevent certain forms of tax evasion or avoidance. However, the Hungarian Government confirmed at the hearing that Hungary has not been granted any such derogation in relation to Article 199(1)(g) of Directive 2006/112.

29 In those circumstances, it should be pointed out that Paragraph 142(1)(g) of the Law on VAT extends the application of the reverse charge regime to the supply of movable property, beyond what is permitted under Article 199(1)(g) of Directive 2006/112, which only covers transfers of immovable property. Therefore, the application of the reverse charge regime and the imposition of the tax penalty at issue in the main proceedings would be incompatible with that directive, if the auction sale at issue in the main proceedings concerned movable property.

30 However, subject to the necessary checks to be carried out by the referring court, it is clear from the documents submitted by the referring court and the oral arguments at the hearing held before the Court of Justice that the issue of the compatibility of Paragraph 142(1)(g) of the Law on VAT with Article 199(1)(g) of Directive 2006/112 was not raised in the main proceedings.

31 In that regard, it should be recalled that, according to the Court’s settled case-law, in the absence of EU rules on a procedural question, it is for the national legal order of each Member State to establish them in accordance with the principle of procedural autonomy, on condition, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (see, to that effect, judgments of 7 June 2007, *van der Weerd and Others*, C?222/05 to C?225/05, EU:C:2007:318, paragraph 28 and the case-law cited, and of 17 March 2016, *Bensada Benallal*, C?161/15, EU:C:2016:175, paragraph 24 and the case-law cited).

32 First, it must be recalled that EU law, and in particular the principle of effectiveness, does not, as a rule, require national courts to raise of their own motion an issue concerning the breach of provisions of EU law, where examination of that issue would oblige them to go beyond the ambit of the dispute defined by the parties themselves and rely on facts and circumstances other than those on which the party with an interest in application of those provisions has based his claim (see, to that effect, inter alia, judgments of 14 December 1995, *van Schijndel and van Veen*, C?430/93 and C?431/93, EU:C:1995:441, paragraph 22, and of 7 June 2007, *van der Weerd and Others*, C?222/05 to C?225/05, EU:C:2007:318, paragraph 36).

33 That limitation on the power of the national court is justified by the principle that, in a civil suit, it is for the parties to take the initiative and that, as a result, where national procedural law provides a genuine opportunity for the party concerned to raise a plea based on EU law, the

national court is able to act of its own motion only in exceptional cases where the public interest requires its intervention (see, to that effect, judgment of 7 June 2007, *van der Weerd and Others*, C?222/05 to C?225/05, EU:C:2007:318, paragraphs 35 and 41 and the case-law cited).

34 In the present case, it must be pointed out that it is not apparent from the information in the documents before the Court that the applicant in the main proceedings was prevented by national procedural law from raising a plea alleging the possible incompatibility of Paragraph 142(1)(g) of the Law on VAT with Article 199(1)(g) of Directive 2006/112 (see, by analogy, judgment of 7 June 2007, *van der Weerd and Others*, C?222/05 to C?225/05, EU:C:2007:318, paragraph 41).

35 Secondly, it must be pointed out that respect for the principle of equivalence requires that, where the provisions of national law relating to procedural rules confer on a court the obligation to raise of its own motion a plea based on the infringement of national law, such an obligation must prevail in the same way for the same type of plea based on the infringement of EU law (see, to that effect, judgments of 14 December 1995, *van Schijndel and van Veen*, C?430/93 and C?431/93, EU:C:1995:441, paragraph 13, and of 17 March 2016, *Bensada Benallal*, C?161/15, EU:C:2016:175, paragraph 30). The same applies if national law confers on the court the power to raise such a plea of its own motion (see, to that effect, judgment of 14 December 1995, *van Schijndel and van Veen*, C?430/93 and C?431/93, EU:C:1995:441, paragraph 14).

36 In that regard, in reply to a question asked by the Court at the hearing, the Hungarian Government indicated that, under national law, the referring court had the possibility of raising of its own motion a plea alleging infringement of a rule of national law, just as it did for a plea alleging infringement of a rule of EU law.

37 It should be recalled that, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law (see, inter alia, judgments of 18 July 2007, *Lucchini*, C?119/05, EU:C:2007:434, paragraph 43, and of 26 May 2011, *Stichting Natuur en Milieu and Others*, C?165/09 to C?167/09, EU:C:2011:348, paragraph 47).

38 In addition, it is also clear from settled case-law that it is for the Court of Justice to provide the national court with an answer which will be of use and to enable it to determine the case at issue (judgment of 11 September 2014, *B.*, C?394/13, EU:C:2014:2199, paragraph 21 and the case-law cited).

39 In the present case, given that it is for the referring court to establish, first, whether a mobile hangar, such as the one delivered in the transaction at issue in the main proceedings, is movable or immovable property, and secondly, whether the referring court is able to raise of its own motion the incompatibility of Paragraph 142(1)(g) of the Law on VAT with Article 199(1)(g) of Directive 2006/112, it is possible that the reply to the questions raised is still relevant for the purposes of resolving the dispute in the main proceedings. It is therefore appropriate to answer those questions.

The first question

40 By its first question, the referring court asks in essence whether the provisions of Directive 2006/112 and the principles of fiscal neutrality and proportionality must be interpreted to the effect that, in a situation such as that in the main proceedings, they preclude the purchaser of an item of property from being deprived of the right to deduct the VAT which he paid to the seller when that tax was not due, on the basis of an invoice drawn up in accordance with the rules of the ordinary VAT regime, where the relevant transaction came under the reverse charge mechanism, and the

seller paid that tax to the Treasury.

41 It must be recalled that, under the reverse charge regime, no VAT payment takes place between the seller and the purchaser of the property, the purchaser being liable, in respect of the transactions carried out, for the input VAT, while being able, in principle, to deduct that tax so that no amount is payable to the tax authorities (see, to that effect, judgment of 6 February 2014, *Fatorie*, C?424/12, EU:C:2014:50, paragraph 29 and the case-law cited).

42 It must also be pointed out that the right of deduction forms an integral part of the VAT scheme and in principle may not be limited (judgments of 15 July 2010, *Pannon Gép Centrum*, C?368/09, EU:C:2010:441, paragraph 37; of 6 February 2014, *Fatorie*, C?424/12, EU:C:2014:50, paragraph 30; and of 28 July 2016, *Astone*, C?332/15, EU:C:2016:614, paragraph 30).

43 The deduction rules thus established are intended to free the taxable person completely of the burden of the VAT accruing or paid in all its 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 (see judgments of 22 February 2001, *Abbey National*, C?408/98, EU:C:2001:110, paragraph 24; of 6 February 2014, *Fatorie*, C?424/12, EU:C:2014:50, paragraph 31; and of 28 July 2016, *Astone*, C?332/15, EU:C:2016:614, paragraph 29).

44 It should also be recalled that, as regards the rules governing the exercise of the right to deduct VAT in the reverse charge procedure under Article 199(1) of Directive 2006/112, a taxable person who is liable as the purchaser of an item of property for the VAT relating thereto is not obliged to hold an invoice drawn up in accordance with the formal requirements of that directive in order to be able to exercise his right to deduct, and only has to fulfil the formalities laid down by the Member State concerned in the exercise of the option conferred by Article 178(f) of that directive (see, to that effect, judgment of 6 February 2014, *Fatorie*, C?424/12, EU:C:2014:50, paragraphs 32 and 33).

45 In the present case, it is clear from the request for a preliminary ruling that the invoice at issue in the main proceedings does not contain the words ‘reverse charge’, contrary to the requirements of Paragraph 169(n) of the Law on VAT and that Mr Farkas incorrectly paid the VAT, wrongly referred to in that invoice, to the seller in question in the main proceedings, whereas, under the reverse charge regime, he should, as the recipient of the property, have paid the VAT to the tax authority in accordance with Article 199(1)(g) of Directive 2006/112. Thus, besides the fact that that invoice does not meet the formal requirements provided for by the national legislation, a substantive requirement of that regime has not been satisfied.

46 As the Court found in the judgment of 6 February 2014, *Fatorie*, (C?424/12, EU:C:2014:50, paragraph 38), such a situation prevented the Hungarian tax authority from investigating the application of the reverse charge regime and led to a risk of a loss of tax revenue for the Member State concerned.

47 Moreover, it must be stated that the right to deduct can be exercised only in respect of taxes actually due, that is to say, the taxes corresponding to a transaction subject to VAT or paid in so far as they were due (see, to that effect, judgment of 6 February 2014, *Fatorie*, C?424/12, EU:C:2014:50, paragraph 39). As it happens, the VAT paid by Mr Farkas to the seller of the mobile hangar at issue in the main proceedings was not due.

48 Thus, since the VAT was not due and the payment was made in breach of a substantive requirement of the reverse charge regime, Mr Farkas cannot claim the right to deduct that VAT.

49 However, Mr Farkas may claim reimbursement of the tax unduly paid to the seller of the mobile hangar in accordance with national law (see, to that effect, judgment of 6 February 2014, *Fatorie*, C?424/12, EU:C:2014:50, paragraph 42).

50 In that regard, the Court has already held that, in the absence of EU rules on applications for the repayment of taxes, it is for the domestic legal system of each Member State to lay down the conditions under which such applications may be made; those conditions must observe the principles of equivalence and effectiveness, that is to say, they must not be less favourable than those relating to similar claims founded on provisions of domestic law or framed so as to render virtually impossible the exercise of rights conferred by the EU legal order (see, to that effect, judgment of 15 March 2007, *Reemtsma Cigarettenfabriken*, C?35/05, EU:C:2007:167, paragraph 37).

51 Given that, in principle, it falls to the Member States to determine the conditions in which improperly invoiced VAT may be adjusted, the Court has accepted that a system in which, first, the seller of the property who has paid the VAT to the tax authority in error may seek to be reimbursed and, secondly, the purchaser of that property may bring a civil law action against that seller for recovery of the sums paid but not due, observes the principles of neutrality and effectiveness. Such a system enables the purchaser who bore the tax invoiced in error to obtain reimbursement of the sums unduly paid (see, to that effect, judgment of 15 March 2007, *Reemtsma Cigarettenfabriken*, C?35/05, EU:C:2007:167, paragraphs 38 and 39 and the case-law cited).

52 In addition, according to settled case-law, in the absence of relevant EU rules, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under EU law are a matter for the domestic legal order of each Member State, under the principle of the procedural autonomy of the Member States (see, inter alia, judgments of 16 May 2000, *Preston and Others*, C?78/98, EU:C:2000:247, paragraph 31, and of 15 March 2007, *Reemtsma Cigarettenfabriken*, C?35/05, EU:C:2007:167, paragraph 40).

53 However, if reimbursement of the VAT becomes impossible or excessively difficult, in particular in the case of the insolvency of the seller, the principle of effectiveness may require that the purchaser of the property concerned be able to address his application for reimbursement to the tax authority directly. Thus, the Member States must provide for the instruments and the detailed procedural rules necessary to enable the purchaser to recover the unduly invoiced tax in order to respect the principle of effectiveness (see, to that effect, judgment of 15 March 2007, *Reemtsma Cigarettenfabriken*, C?35/05, EU:C:2007:167, paragraph 41).

54 As regards the main proceedings, it should also be pointed out, first, that it is clear from the request for a preliminary ruling that the seller who transferred the mobile hangar at issue in the main proceedings is subject to insolvency proceedings, which may mean that it is excessively difficult or impossible for Mr Farkas to be able to obtain a refund of the VAT which that seller unduly invoiced. Secondly, following the decisions of the Hungarian tax authority, Mr Farkas was considered to be liable for that VAT to the Treasury, even though he had paid the tax to the seller. It is for the referring court to ascertain whether Mr Farkas is entitled to be reimbursed by the seller for the undue tax.

55 Moreover, it should be added that, according to the information provided by the referring court, there is no evidence of tax evasion in the present case, and the seller, who issued the invoice in question in the main proceedings, paid the VAT to the Treasury, so that the Treasury suffered no loss as a result of the fact that that invoice was wrongly issued under the ordinary tax system, instead of the reverse charge system.

56 In those circumstances, to the extent that reimbursement of the VAT, unduly invoiced by the seller in question in the main proceedings, to Mr Farkas, the purchaser of the property concerned, becomes impossible or excessively difficult, in particular in the case of the insolvency of the seller, Mr Farkas must be able to address his application for reimbursement to the tax authority directly.

57 In the light of the foregoing considerations, the answer to the first question is that the provisions of Directive 2006/112 and the principles of fiscal neutrality, effectiveness and proportionality must be interpreted to the effect that, in a situation such as that in the main proceedings, they do not preclude the purchaser of an item of property from being deprived of the right to deduct the VAT which he paid to the seller when that tax was not due, on the basis of an invoice drawn up in accordance with the rules of the ordinary VAT regime, where the relevant transaction came under the reverse charge mechanism, and the seller paid that tax to the Treasury. However, to the extent that reimbursement of the unduly invoiced VAT by the seller to the purchaser becomes impossible or excessively difficult, in particular in the case of the insolvency of the seller, those principles require that the purchaser be able to address his application for reimbursement to the tax authority directly.

The second question

58 By its second question, the referring court asks, in essence, whether the principle of proportionality must be interpreted to the effect that it precludes national tax authorities, in a situation such as that in the main proceedings, from imposing on a taxable person, who purchased an item of property the transfer of which comes under the reverse charge regime, a tax penalty of 50% of the amount of VAT which he is required to pay to the tax authority, where that authority suffered no loss of tax revenue and there is no evidence of tax evasion.

59 It is necessary to point out that, in the absence of harmonisation of EU legislation in the field of sanctions applicable where conditions laid down by arrangements under that legislation are not complied with, Member States remain empowered to choose the sanctions which seem to them to be appropriate. Nevertheless, the Member States must exercise that power in accordance with EU law and its general principles and, consequently, in accordance with the principle of proportionality (see, to that effect, inter alia, judgments of 7 December 2000, *de Andrade*, C?213/99, EU:C:2000:678, paragraph 20, and of 6 February 2014, *Fatorie*, C?424/12, EU:C:2014:50, paragraph 50).

60 Thus, such penalties must not go beyond what is necessary to attain the objectives of ensuring the correct levying and collection of the tax and preventing fraud. In order to assess whether a penalty is consistent with the principle of proportionality, account must be taken inter alia of the nature and the degree of seriousness of the infringement which the penalty seeks to sanction, and of the means of establishing the amount of the penalty (see, to that effect, judgments of 8 May 2008, *Ecotrade*, C?95/07 and C?96/07, EU:C:2008:267, paragraphs 65 to 67, and of 20 June 2013, *Rodopi-M 91*, C?259/12, EU:C:2013:414, paragraph 38).

61 Although it falls to the referring court to assess whether the amount of the penalty does not go beyond what is necessary to attain the objectives set out in the previous paragraph (judgment of 20 June 2013, *Rodopi-M* 91, C?259/12, EU:C:2013:414, paragraph 39), it is appropriate to inform that court of certain aspects of the main proceedings which would enable it to determine whether the penalty imposed on Mr Farkas, on the basis of the provisions of the Law on the Tax Procedure Code, is compatible with the principle of proportionality.

62 In that regard, such a penalty appears to create an incentive for taxable persons to rectify as quickly as possible instances of insufficient payment of the tax and therefore to achieve the

objective of ensuring the correct collection of that tax.

63 According to Paragraph 170(1) of that law, the amount of the penalty is set, by default, at 50% of the amount of the VAT which the taxable person is required to pay to the tax authority. Paragraph 171(1) of that law stipulates that the amount of the fine may be reduced, or even remitted, either *ex officio* or on request, in exceptional circumstances which lead to the conclusion that the taxable person responsible for the tax liability, among others, acted with the discernment that could reasonably have been expected from him in those particular circumstances. That provision also provides that the reduction of the fine should be made by weighing up all the circumstances of the case in question, in particular the size of the tax liability, the circumstances of how it arose, and the seriousness and frequency of the taxable person's unlawful conduct.

64 As the Advocate General stated in point 63 of his Opinion, those detailed rules for determining the penalty, in principle, make it possible to ensure that it does not go beyond what is necessary to attain the objectives of ensuring the correct collection of tax and preventing evasion.

65 As regards the proportionality of the penalty imposed on Mr Farkas in the main proceedings, it is clear that, in relation to the nature and seriousness of the infringement at issue in the main proceedings, as the Commission submitted in its written observations, that infringement consists of an error relating to the application of the VAT mechanism, which is an infringement of an administrative nature and which, in view of the information in the case file sent to the Court, first, did not cause the tax authority any loss of revenue, and secondly, shows no evidence of fraud.

66 In those circumstances, the imposition on Mr Farkas of a fine of 50% of the amount of the VAT applicable to the operation at issue appears to be disproportionate, this being a matter for the referring court to determine.

67 Having regard to the foregoing considerations, the answer to the second question is that the principle of proportionality must be interpreted to the effect that it precludes national tax authorities, in a situation such as that in the main proceedings, from imposing on a taxable person, who purchased an item of property the transfer of which comes under the reverse charge regime, a tax penalty of 50% of the amount of VAT which he is required to pay to the tax authority, where that authority suffered no loss of tax revenue and there is no evidence of tax evasion, this being a matter for the referring court to determine.

Costs

68 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:

1. **Article 199(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted to the effect that it applies to the supply of immovable property sold by a judgment debtor in a compulsory sale procedure.**

2. **The provisions of Directive 2006/112, as amended by Directive 2010/45, and the principles of fiscal neutrality, effectiveness and proportionality must be interpreted to the effect that, in a situation such as that in the main proceedings, they do not preclude the purchaser of an item of property from being deprived of the right to deduct the value added tax which he paid to the seller when that tax was not due, on the basis of an invoice drawn up in accordance with the rules of the ordinary value added tax regime, where the relevant transaction came under the reverse charge mechanism, and the seller paid that tax to the**

Treasury. However, to the extent that reimbursement of the unduly invoiced value added tax by the seller to the purchaser becomes impossible or excessively difficult, in particular in the case of the insolvency of the seller, those principles require that the purchaser be able to address his application for reimbursement to the tax authority directly.

3. **The principle of proportionality must be interpreted to the effect that it precludes national tax authorities, in a situation such as that in the main proceedings, from imposing on a taxable person, who purchased an item of property the transfer of which comes under the reverse charge regime, a tax penalty of 50% of the amount of value added tax which he is required to pay to the tax authority, where those authorities suffered no loss of tax revenue and there is no evidence of tax evasion, this being a matter for the referring court to determine.**

[Signatures]

* Language of the case: Hungarian.