

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

9 September 2021 (*)

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Article 69 – Chargeability of VAT – Intra-Community acquisition of motor fuels – Obligation to make early payment of VAT – Article 206 – Concept of ‘interim payments’ – Article 273 – Correct collection of VAT and prevention of evasion – Discretion of the Member States)

In Case C-855/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), made by decision of 17 October 2019, received at the Court on 22 November 2019, in the proceedings

G. sp. z o.o.

v

Dyrektor Izby Administracji Skarbowej w Bydgoszczy,

THE COURT (Fifth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, M. Ilešič, E. Juhász, C. Lycourgos and I. Jarukaitis, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- G. sp. z o.o., by M. Kalinowski, radca prawny,
- the Dyrektor Izby Administracji Skarbowej w Bydgoszczy, by B. Kołodziej and T. Wojciechowski, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by M. Siekierzyńska and J. Jokubauskaitė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 March 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 110 TFEU and

Articles 69, 206 and 273 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) ('the VAT Directive').

2 The request has been made in proceedings between G. sp. z o.o. and the Dyrektor Izby Administracji Skarbowej w Bydgoszczy (Director of the Tax Administration Chamber, Bydgoszcz, Poland, 'the tax authority') concerning an obligation to make early payment of value added tax (VAT) on intra-Community acquisitions of motor fuel.

Legal context

EU law

3 As set out in Article 62 of the VAT Directive:

'For the purposes of this Directive:

(1) "chargeable event" shall mean the occurrence by virtue of which the legal conditions necessary for VAT to become chargeable are fulfilled;

(2) VAT shall become "chargeable" when the tax authority becomes entitled under the law, at a given moment, to claim the tax from the person liable to pay, even though the time of payment may be deferred.'

4 Article 68 of that directive provides:

'The chargeable event shall occur when the intra-Community acquisition of goods is made.

The intra-Community acquisition of goods shall be regarded as being made when the supply of similar goods is regarded as being effected within the territory of the relevant Member State.'

5 Article 69 of that directive states:

'In the case of the intra-Community acquisition of goods, VAT shall become chargeable on issue of the invoice, or on expiry of the time limit referred to in the first paragraph of Article 222 if no invoice has been issued by that time.'

6 Article 206 of that directive provides:

'Any taxable person liable for payment of VAT must pay the net amount of the VAT when submitting the VAT return provided for in Article 250. Member States may, however, set a different date for payment of that amount or may require interim payments to be made.'

7 As set out in Article 222 of the VAT Directive:

'For supplies of goods carried out in accordance with the conditions specified in Article 138 or for supplies of services for which VAT is payable by the customer pursuant to Article 196, an invoice shall be issued no later than on the fifteenth day of the month following that in which the chargeable event occurs.

For other supplies of goods or services Member States may impose time limits on taxable persons for the issue of invoices.'

8 Article 250 of that directive provides:

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

...’

9 Article 273 of that directive states:

‘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.’

Polish law

10 Article 20(5) of the ustawa o podatku od towarów i usług (Law on value added tax) of 11 March 2004 (Dz. U. of 2016, item 710), as in force at the material time (‘the Law on VAT’), provides:

‘In the case of the intra-Community acquisition of goods, VAT shall become chargeable on the day of issue of the invoice by the taxpayer, and no later than on the fifteenth day of the month following that in which the acquisition of the goods was made ...’

11 Pursuant to Article 99(11a) of the Law on VAT, in cases of intra-Community acquisitions of goods referred to in Article 103(5a) of that law, the taxable person is required to submit to the head of the customs office competent in matters relating to the payment of excise duty a monthly statement of the amounts of VAT payable no later than on the fifth day of the month following that in which the payment obligation arose.

12 Under Article 103(5a) of that law:

‘In the case of the intra-Community acquisition of the motor fuels referred to in Annex 2 to the ustawa o podatku akcyzowym (Law on Excise Duty) of 6 December 2008, the production or marketing of which requires a licence pursuant to the provisions of the ustawa – Prawo energetyczne (Law on Energy) of 10 April 1997, the taxable person shall be obliged, without being called upon to do so by the head of the customs office, to calculate and pay the tax to the customs authorities competent for the payment of excise duty:

(1) within five days of the date on which the goods were presented at the place of receipt of the goods subject to excise duties specified in the relevant permit – if the goods are the subject of an intra-Community acquisition within the meaning of [the Law of 6 December 2008 on Excise Duty] by a registered consignee under the excise duty suspension procedure pursuant to the applicable provisions on excise duty;

(2) within five days of the date on which the goods were imported into a tax warehouse from the territory of another Member State;

(3) upon the movement of such goods within the national territory – if the goods are moved

outside an excise duty suspension procedure pursuant to the applicable provisions on excise duty.'

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

13 In December 2016, G. made 20 intra-Community acquisitions of diesel fuel falling within CN code 2710 19 43, for a total quantity of 3 190 874 m³.

14 The tax authority stated that the intra-Community acquisitions made by G. came under the second situation envisaged in Article 103(5a) of the Law on VAT, namely the placement of goods into a tax warehouse from the territory of another Member State.

15 In breach of that provision, G. failed to pay the VAT on those acquisitions, which amounted to a total of 1 530 766 Polish zlotys (PLN) (approximately EUR 345 000), within five days of the diesel fuel entering the national territory. Nor did it submit, in breach of Article 99(11a) of that law, a monthly statement in respect of those acquisitions no later than the fifth day of the month following that in which the payment obligation arose.

16 By decision of 6 April 2018, the tax authority therefore required G., by means of a tax adjustment for December 2016, to make immediate payment of the VAT payable, plus interest for late payment calculated from the day following the due date for payment.

17 By judgment of 10 July 2018, the Wojewódzki Sąd Administracyjny w Bydgoszczy (Regional Administrative Court, Bydgoszcz, Poland) dismissed the appeal brought by G. against that decision.

18 The Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), which is hearing the appeal against that judgment, states that Article 103(5a) of the Law on VAT forms part of a series of amendments made to that law, with effect from 1 August 2016, in order to improve the collection of VAT on intra-Community acquisitions of motor fuels and to prevent VAT evasion in cross-border trade in those fuels.

19 The referring court is unsure, first, whether Article 103(5a), in so far as it imposes shorter time limits for the payment of VAT on acquisitions of motor fuel from other Member States than for domestic acquisitions, is compatible with Article 110 TFEU. The option afforded Member States by Article 273 of the VAT Directive to impose any obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion can be exercised only subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that those obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

20 Next, in the event that Article 103(5a) of the Law on VAT is not contrary to either Article 110 TFEU or Article 273 of the VAT Directive, the referring court is unsure whether Article 103(5a) is compatible with Article 69 of the VAT Directive, in so far as it provides that VAT on the intra-Community acquisition of motor fuels may be collected even before the incurrance of the tax obligation referred to in Article 69, pursuant to which that obligation arises on the issue of the invoice or, if no invoice has been issued before the intra-Community acquisition is made, no later than on the fifteenth day of the month following that in which the chargeable event occurs.

21 According to the referring court, the answer to that question depends on the nature of the payments referred to in Article 103(5a) of the Law on VAT. If they constitute a separate mechanism for the accelerated collection of VAT, the obligation to pay VAT before the tax debt arises in accordance with Article 69 would be incompatible with those provisions, since there would be no basis on which VAT becomes chargeable at that point. On the other hand, the

obligation to pay VAT before the tax debt arises might be in conformity with that provision if those payments were regarded as an 'interim payment', within the meaning of the second sentence of Article 206 of the VAT Directive. If so, the question arises as to whether that interim payment could be calculated on the gross amount of the VAT payable on an intra-Community acquisition of motor fuels without taking into account the taxable person's right to deduct.

22 Lastly, if that were the case, the referring court raises the question of whether an interim VAT payment, within the meaning of that provision, which has not been paid on time, loses its legal status at the end of the VAT reporting period in which it is to be paid.

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

'(1) Do Article 110 [TFEU] and Article 273 of [the VAT Directive] preclude a provision such as Article 103(5a) of [the Law on VAT], which stipulates that, in the case of an intra-Community acquisition of motor fuels, the taxable person is obliged, without being called upon to do so by the head of the customs office, to calculate and pay the amounts of tax to the account of the customs office competent for dealing with the payment of excise duty:

(a) within five days of the date on which the goods in question enter the place of receipt of excise goods specified in the relevant permit – if the goods are the subject of an intra-Community acquisition within the meaning of [the Law of 6 December 2008 on excise duty] by a registered consignee under the excise duty suspension procedure pursuant to the provisions on excise duty;

(b) within five days of the date on which such goods enter a tax warehouse from the territory of a Member State other than Poland;

(c) upon the movement of these goods within the territory of Poland – if the goods are moved outside of the excise duty suspension procedure pursuant to the provisions on excise duty?

(2) Does Article 69 of [the VAT Directive] preclude a provision such as Article 103(5a) of the Law on VAT, which stipulates that, in the case of the intra-Community acquisition of motor fuels, the taxable person is obliged, without being called upon to do so by the head of a customs office, to calculate and pay the amounts of tax to the account of the customs office competent for dealing with the payment of excise duty:

(a) within five days of the date on which the goods in question enter the place of receipt of excise goods specified in the relevant permit – if the goods are the subject of an intra-Community acquisition within the meaning of [the Law of 6 December 2008 on excise duty] by a registered consignee under the excise duty suspension procedure pursuant to the provisions on excise duty;

(b) within five days of the date on which such goods enter a tax warehouse from the territory of a Member State other than Poland;

(c) upon the movement of these goods within the territory of Poland – if the goods are moved outside of the excise duty suspension procedure pursuant to the provisions on excise duty;

where the above amounts are interpreted as not constituting interim VAT payments within the meaning of Article 206 of [the VAT Directive]?

(3) Does an interim VAT payment within the meaning of Article 206 of [the VAT Directive] which is not paid on time lose its legal status at the end of the tax period for which it is to be paid?'

Consideration of the questions referred

24 By its questions, the referring court asks, in the first place, whether Article 110 TFEU must be interpreted as precluding a provision of national law which imposes an obligation to make early payment of VAT on the intra-Community acquisition of motor fuels before VAT becomes chargeable, within the meaning of Article 69 of the VAT Directive. In the second place, the referring court asks whether that directive, in particular Articles 69, 206 and 273 thereof, must be interpreted as precluding such a provision of national law. Furthermore, that court asks, first, whether the VAT Directive must be interpreted as precluding, if applicable, the requirement that the VAT payable on such an acquisition is calculated on a gross basis without taking account of the right to deduct and, secondly, whether an interim VAT payment, within the meaning of Article 206 of that directive, which is not paid within the prescribed time limit, loses its legal status at the end of the VAT reporting period for which that interim payment is to be made.

25 It is necessary, first of all, to answer the questions raised by the referring court by which it asks, in essence, whether Articles 69, 206 and 273 of the VAT Directive must be interpreted as precluding a provision of national law which imposes an obligation to pay VAT on the intra-Community acquisition of motor fuels before that VAT becomes chargeable, within the meaning of Article 69 of that directive.

26 It should be borne in mind that Article 62(1) of the VAT Directive defines the 'chargeable event' as the occurrence by virtue of which the legal conditions necessary for VAT to become chargeable are fulfilled, while paragraph 2 of that article stipulates that VAT becomes 'chargeable' when the tax authority becomes entitled under the law, at a given moment, to claim the tax from the person liable to pay, even though the time of payment may be deferred. Furthermore, it follows from the first sentence of Article 206 of that directive that the payment obligation arises, in principle, when the VAT return provided for in Article 250 of that directive is submitted.

27 In that regard, it should be emphasised that a distinction has to be drawn between, on the one hand, the concepts of 'chargeable event' and 'chargeability' of tax, covered by Article 62 of the VAT Directive, and, on the other hand, that of the 'payment' of the tax (see, by analogy, judgment of 20 October 1993, *Balocchi*, C-10/92, EU:C:1993:846, paragraph 24).

28 As the Advocate General observed in point 87 of his Opinion, the chargeable event, chargeability and the obligation to pay VAT represent three successive stages in the process culminating in the collection of VAT, in that for an obligation to pay VAT to arise, that VAT must have become chargeable and for the VAT to have become chargeable, a chargeable event must first have occurred.

29 As regards intra-Community acquisitions, while, pursuant to Article 68 of the VAT Directive, the chargeable event for VAT occurs when the intra-Community acquisition of goods is made, that VAT becomes chargeable, under Article 69 of that directive, read in conjunction with Article 222 thereof, only on a subsequent date, namely when the invoice is issued or, at the latest, on the fifteenth day of the month following that in which the chargeable event occurs, where no invoice has been issued before that date.

30 In the present case, although it is common ground that, under the scheme established by Article 103(5a) of the Law on VAT on intra-Community acquisitions of motor fuels, the chargeable event occurs, in accordance with Article 68 of the VAT Directive, before the advance payment of VAT is payable, since that payment obligation arises after the entry of those goods into the national territory, it nevertheless appears that that payment obligation is imposed before VAT becomes chargeable in accordance with Article 69 of that directive, read in conjunction with Article

222 thereof.

31 It is apparent from the order for reference that, in breach of those latter provisions, Article 103(5a) of the Law on VAT gives rise to the obligation to make early payment of VAT independently of whether an invoice is issued or the time limit referred to in paragraph 29 above has expired, at the end of which VAT necessarily becomes chargeable.

32 Furthermore, while it is true that Member States may, under the second sentence of Article 206 of the VAT Directive, derogate from the rule that payment must be made when the return is submitted and to demand interim payment, that option may be exercised only in so far as it relates to a tax which has become chargeable (see, by analogy, judgment of 20 October 1993, *Balocchi*, C-10/92, EU:C:1993:846, paragraphs 25 and 27).

33 As the Advocate General observed in points 98 and 99 of his Opinion, while the second sentence of Article 206 of the VAT Directive thus qualifies the principle established in the first sentence of that provision, which lays down the obligation to pay on submission of the VAT return, which comes under Chapter 1, entitled 'Obligation to pay', in Title XI of that directive, that article cannot establish a derogation from Articles 62 and 69 of that directive, which come under Title VI of that directive, entitled 'Chargeable event and chargeability of VAT'.

34 Consequently, in view of the fact that the possibility of collecting interim payments pursuant to the second sentence of Article 206 of the VAT Directive allows Member States to bring forward not the date on which VAT becomes chargeable, but only the date of payment of VAT that has already become chargeable, that provision must be interpreted as precluding a provision of the law of a Member State which requires payment of VAT before it has become chargeable pursuant to Article 69 of that directive.

35 That conclusion cannot be called into question by Article 273 of the VAT Directive, which states that, subject to compliance with certain conditions listed in that provision, Member States may impose any other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion. While Member States enjoy a discretion as to the means of achieving those objectives, they are nevertheless required to exercise their powers in this area in accordance with EU law (see, to that effect, judgment of 15 April 2021, *Grupa Warzywna*, C-935/19, EU:C:2021:287, paragraphs 25 and 26 and the case-law cited).

36 Accordingly, a provision of national law can be regarded as compatible with Article 273 only in so far as it complies with, inter alia, the other provisions of the VAT Directive.

37 Consequently, the answer to the questions referred is that Articles 69, 206 and 273 of the VAT Directive must be interpreted as precluding a provision of national law which imposes an obligation to pay VAT on the intra-Community acquisition of motor fuels before that VAT becomes chargeable, within the meaning of Article 69 of that directive.

38 In the light of that answer, there is no need to answer the other parts of the questions referred for a preliminary ruling concerning, first, the interpretation of Article 110 TFEU and, second, other aspects of the interpretation of the VAT Directive.

Costs

39 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 (Fifth Chamber) hereby rules:

Articles 69, 206 and 273 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 as precluding a provision of national law which imposes an obligation to pay value added tax (VAT) on the intra-Community acquisition of motor fuels before that VAT becomes chargeable, within the meaning of Article 69 of Directive 2006/112.

[Signatures]

* Language of the case: Polish.