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Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 13 August 2019 — Vikingo Fővállalkozó Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-610/19)

(2020/C 95/06)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Vikingo Fővállalkozó Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1.

Is it compatible with Articles 168(a) and 178(a) of Council Directive 2006/112/EC (1) of 28 November 2006 on the common system of value added tax in conjunction with Articles 220(a) and 226 of that directive, and with the principle of effectiveness, for a national legal interpretation and a national practice to operate (i) to the effect that the mere fact of being in possession of an invoice the content of which meets the requirements of Article 226 of that directive is not sufficient to fulfil the material conditions governing the right to deduct tax, the taxable person also being compelled, as a prerequisite of legitimately exercising the right to deduct tax on the basis of the invoice in question, to be in possession of additional documentary evidence that must not only comply with the provisions of Directive 2006/112 but also be consistent with the principles of the national legislation on accounting and the specific provisions concerning supporting documents, as well as (ii) to the effect that each member of the chain must recall and declare in the same way each detail of the economic transaction attested by those supporting documents?

2.

Is it compatible with the provisions of Directive 2006/112 on [the deduction of VAT] and with the principles of fiscal neutrality and of effectiveness for a national legal interpretation and a national practice to operate (i) to the effect that, in the case of a chain transaction, the mere fact that the

transaction forms part of a chain has the consequence, irrespective of any other circumstance, of imposing on each of the members of that chain an obligation to scrutinise the components of the economic transaction carried out by them and a duty to draw inferences from that scrutiny for the taxable person situated at the other end of the chain, as well as (ii) to the effect that the taxable person is refused the right to [deduct VAT] on the ground that the constitution of the chain, although not prohibited by national law, was not [reasonably] justified from an economic point of view? In that context, when it comes to examining the objective circumstances capable of justifying a refusal to grant the right [to deduct VAT] in the case of a chain transaction, is it possible, when determining and assessing the relevance and probative force of the evidential material on which the refusal of the right to deduct VAT is based, to apply only the provisions of Directive 2006/112 and national law relating to the deduction of tax, as material provisions specifying the facts relevant to the determination of the factual framework, or is there also a duty to apply, as special provisions, the accounting legislation of the Member State in question?

3.

Is it compatible with the provisions of Directive 2006/112 on [the deduction of VAT] and with the principles of fiscal neutrality and of effectiveness for a national legal interpretation and a national practice to operate (i) to the effect that a taxable person who uses goods for the purposes of his taxed transactions in the Member State in which he carries out those transactions and who is in possession of an invoice consistent with Directive 2006/112 is denied the right [to deduct VAT] on the ground that he is not aware of all the components [of the transaction] carried out by the members of the chain or on the basis of circumstances associated with the members of the chain upstream of the issuer of the invoice and over which the taxable person was unable to bring to bear any influence for reasons beyond his control, as well as (ii) to the effect that the right to [deduct VAT] is made subject to the condition that, so far as concerns the measures reasonably incumbent upon him, the taxable person must comply with a general obligation of scrutiny that must be discharged not only before the contract is concluded but also during and even after its performance? In that context, is the taxable person obliged to refrain from exercising the right [to deduct VAT] in the case where, in connection with any component of the economic transaction indicated on the invoice and at any point subsequent to the conclusion of the contract or during or after its performance, he notices an irregularity or becomes aware of a circumstance the consequence of which would be the refusal of the right [to deduct VAT] pursuant to the practice of the tax authority?

4.

Having regard to the provisions of Directive 2006/112 relating to [the deduction of VAT] and the principle of effectiveness, does the tax authority have an obligation to specify how tax evasion has been committed? Is it appropriate for the tax authority to proceed in such a way that omissions and irregularities on the part of members of the chain that exhibit no reasonable causal link with the right to [deduct tax] are regarded as proof of tax evasion on the ground that, since those omissions and irregularities rendered the content of the invoice implausible, the taxable person knew or should have known about the tax evasion? If tax evasion has been committed, does this justify the fact that the scrutiny required of the taxable person must exhibit the breadth, depth and scope indicated above or does that duty exceed the requirements of the principle of effectiveness?

5.

Is a penalty involving refusal of the right [to deduct VAT] and consisting in the obligation to pay a tax penalty equal to 200 % of the tax difference proportionate in the case where the tax authority has incurred no loss of revenue directly linked to the taxable person's right [to deduct VAT]? May account be taken of the presence of any of the circumstances referred to in the third sentence of

Article 170(1) of the az adózás rendjéről szóló 2003. évi XCII. törvény (Law XCII of 2003 on General Taxation Procedure; ‘the Law on General Taxation Procedure’) in the case where the taxable person has made available to the tax authority all the documents that were in his possession and has included in his tax return the invoices issued?

6.

In the event that it is apparent from the answers given to the questions referred for a preliminary ruling that the interpretation of the rule of national law which has been followed since the case that gave rise to the order of 10 November 2016, *Signum Alfa Sped* (C-446/15, [not published,] EU:C:2016:869) and the practice adopted on the basis of that interpretation are not consistent with the provisions of Directive 2006/112 relating to [the deduction of VAT], and having regard to the fact that the first-instance court cannot make a request for a preliminary ruling to the Court of Justice in all cases, may the view be taken, on the basis of Article 47 of the Charter of Fundamental Rights of the European Union, that the right of taxable persons to bring a judicial action for damages guarantees them the right to an effective remedy and an impartial tribunal provided for in that article? Is it possible, in that context, to adopt an interpretation to the effect that the form of the decision given in *Signum Alfa Sped* means that the question had already been regulated by Community law and had been clarified by the case-law of the Court of Justice and that, consequently, the answer to it was obvious, or does it mean that, since new proceedings were instituted, the question had not been fully clarified and, consequently, there was still a need to seek a preliminary ruling from the Court of Justice?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).