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23.3.2020

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Official Journal of the European Union

C 95/9

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

(Case C-611/19)

(2020/C 95/07)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Crewprint Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1.

Is it compatible with the relevant provisions [on the deduction of VAT] of Directive 2006/112 (1) and with the principle of tax neutrality for national interpretation and practice to operate with the effect that the tax authority denies the right [to deduct VAT] on an economic transaction between the parties, on the basis that it finds the form of the legal relationship between them (a works contract) to be fraudulent because it gives rise to a right to deduct tax and, therefore, classifies it, under Article 1(7) [of the General Law on Tax Procedure] as an activity (agency) that does not give rise to a right to deduct, taking the view that the parties' conduct was intended to evade tax since the activity carried on by the addressee of the invoice did not necessarily have to take [that form of business activity], and since it could also have performed that activity as an agent? In that context, are taxable persons obliged, as a requirement for [deducting VAT], to choose the form of economic activity that places the greater tax burden on them, or is there an abusive practice where, in exercise of their freedom to contract and for purposes unrelated to tax law, they choose a contractual form for the economic activity carried on between them that also has the unintended consequence of entitling them to deduct the tax?

2.

Is it compatible with the relevant provisions [on the deduction of VAT] of Directive 2006/112 and

with the principle of tax neutrality for national interpretation and practice to operate with the effect that, where a taxable person wishing to exercise the right [to deduct VAT] fulfils the substantive and formal requirements [for that deduction] and has taken the measures it can be expected to take before concluding the contract, the tax authority denies the right to deduct VAT on the basis that it finds that it was unnecessary from an economic perspective to set up a chain and that doing so is therefore an abusive practice because the subcontractor, notwithstanding that it is in a position to supply the services, engages other subcontractors to perform them for reasons unconnected with the taxable event, and because the taxable person wishing to exercise the right [to deduct VAT] knew that its subcontractor, at the time it accepted the commission, owing to a lack of personnel and material resources, would perform the services using subcontractors of its own? Is the answer affected by the fact that the taxable person or its subcontractor included in the chain a subcontractor with which it has a direct relationship or to which it has a personal or organisational link (personal acquaintance, family relationship or even ownership)?

3.

If the preceding question is answered in the affirmative, is the requirement that the facts must be determined on the basis of objective facts satisfied where, in proceedings in which the tax authority considers the economic relationship between the taxable person wishing to exercise the right to [deduct VAT] and its subcontractor is irrational and unjustified, it bases that finding solely on the evidence of some of the subcontractor's employees, without ascertaining on the basis of objective facts the characteristics of the economic activity under the contract, the specific circumstances of that activity or the relevant economic context, and without hearing the directors with decision-making powers of the taxable person or of the subcontractors forming part of the chain and, if that requirement is satisfied, is it relevant whether the taxable person or members of the chain are capable of performing the services and is it necessary to involve an expert in that respect?

4.

Is it compatible with Directive 2006/112 and with the principle of effectiveness for national interpretation and practice to operate with the effect that, where the substantive and formal requirements [to deduct VAT] are satisfied and the measures that can [reasonably] be expected have been taken, the tax authority, acting on the basis of circumstances that, according to judgments of the Court of Justice do not justify [the refusal to allow the deduction of VAT] and are not objective, finds tax evasion to have been proven and denies the right [to deduct VAT] solely because those circumstances occur in the chain detected as a whole, in a sufficient number of its members who were investigated?

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