Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

10 February 2022 (*)

(Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Point (b) of the first paragraph of Article 66 – Chargeability of VAT – The time the payment is received – Article 167 – Origin and scope of the right of input VAT deduction – Article 167a – Derogation – Cash accounting – Letting and subletting of a property used for industrial or commercial purposes)

In Case C?9/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), made by decision of 10 December 2019, received at the Court on 10 January 2020, in the proceedings

Grundstücksgemeinschaft Kollaustraße 136

v

Finanzamt Hamburg-Oberalster,

THE COURT (Fifth Chamber),

composed of C. Lycourgos, President of the Fourth Chamber, acting as President of the Fifth Chamber, I. Jarukaitis (Rapporteur) and M. Ileši?, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Grundstücksgemeinschaft Kollaustraße 136, by M. Gerber, Steuerberater,

– the German Government, initially by J. Möller and S. Eisenberg, then by J. Möller, acting as Agents,

– the Swedish Government, by O. Simonsson and by C. Meyer-Seitz, M. Salborn Hodgson, H. Shev, H. Eklinder and R. Shahsavan Eriksson, acting as Agents,

– the European Commission, initially by R. Pethke and N. Gossement, and subsequently by R. Pethke, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 September 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 167 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 Grundstücksgemeinschaft Kollaustraße 136 ('Kollaustraße') and the Finanzamt Hamburg-Oberalster (Hamburg-Oberalster Tax Office, Germany) ('the tax office'), concerning the determination of the point in time at which the right of deduction of value added tax (VAT) arises.

Legal context

European Union law

3 Recital 24 of the VAT Directive states as follows:

'The concepts of chargeable event and of the chargeability of VAT should be harmonised if the introduction of the common system of VAT and of any subsequent amendments thereto are to take effect at the same time in all Member States.'

4 Recital 4 of Directive 2010/45 provides:

'To help small and medium-sized enterprises that encounter difficulties in paying VAT to the competent authority before they have received payment from their customers, Member States should have the option of allowing VAT to be accounted using a cash accounting scheme which allows the supplier to pay VAT to the competent authority when he receives payment for a supply and which establishes his right of deduction when he pays for a supply. This should allow Member States to introduce an optional cash accounting scheme that does not have a negative effect on cash flow relating to their VAT receipts.'

5 Title VI of the VAT Directive, entitled 'Chargeable event and chargeability of VAT', contains four chapters. In Chapter 2 of that title, entitled 'Supply of goods or services', Article 63 of that directive provides:

'The chargeable event shall occur and VAT shall become chargeable when the goods or the services are supplied.'

6 Article 66 of that directive states:

'By way of derogation from Articles 63, 64 and 65, Member States may provide that VAT is to become chargeable, in respect of certain transactions or certain categories of taxable person at one of the following times:

…

(b) no later than the time the payment is received;

…'

7 Title X of the VAT Directive, entitled ‘Deductions’, contains five chapters. Chapter 1 of that title, entitled ‘Origin and scope of the right of deduction’, includes, inter alia, Articles 167, 167a and 168 of that directive.

8 Article 167 of the VAT Directive states:

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

9 Under Article 167a of that directive:

‘Member States may provide within an optional scheme that the right of deduction of a taxable person whose VAT solely becomes chargeable in accordance with Article 66(b) be postponed until the VAT on the goods or services supplied to him has been paid to his supplier.

…’

10 Article 168 of that directive 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 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;

…’

11 Chapter 4 of Title X of the VAT Directive, entitled ‘Rules governing exercise of the right of deduction’, includes, inter alia, Articles 178 and 179 of that directive.

12 Article 178(a) of the VAT Directive states:

‘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.’

13 Under Article 179 of that directive:

‘The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178.

…’

14 Title XI of that directive, entitled ‘Obligations of taxable persons and certain non-taxable persons’, contains eight chapters, including Chapter 3, entitled ‘Invoicing’. In Section 4 of that chapter, entitled ‘Content of invoices’, Article 226 of that directive states:

‘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:

…

(7a) where the VAT becomes chargeable at the time when the payment is received in accordance with Article 66(b) and the right of deduction arises at the time the deductible tax becomes chargeable, the mention “Cash accounting”;

…’

German law

15 The Umsatzsteuergesetz (Law on Turnover Tax), of 21 February 2005 (BGBl. 2005 I, p. 386), in the version applicable to the dispute in the main proceedings (‘the UStG’), provides, in Paragraph 13, headed ‘Chargeability of tax’:

‘(1) Tax shall become chargeable:

1. on goods and services:

(a) in cases where tax is calculated on the basis of remuneration agreed (first sentence of Paragraph 16(1)), upon expiry of the prepayment period in which the supplies of goods or services were made. This shall also apply to part supplies. These are present where it is agreed that certain parts of an economically divisible supply are to be paid for separately. Where the remuneration or part remuneration is received before the supply or part supply has been made, tax shall become chargeable thereon upon expiry of the prepayment period in which the remuneration or part remuneration was received,

(b) in cases where tax is calculated on the basis of remuneration received (Paragraph 20), upon expiry of the prepayment period in which the remuneration was received,

…’

16 Paragraph 15 of that law, entitled ‘Deduction of input tax’, provides:

‘(1) The trader may deduct the following amounts by way of input tax:

1. the tax lawfully payable on goods and services provided to his business by another trader. Deduction of the input tax is subject to the condition that the trader holds an invoice drawn up in accordance with Paragraphs 14 and 14a.

…’

17 Paragraph 16 of that law, entitled ‘Tax calculation, tax period and individual taxation’, states:

‘(1) Where Paragraph 20 does not apply, the tax shall be calculated on the basis of remuneration agreed. The tax period shall be the calendar year. …

(2) The tax deductible under Paragraph 15 which falls within the tax period shall be deducted from the tax calculated in accordance with subparagraph (1).’

18 Paragraph 20 of the UStG, entitled ‘Calculation of tax on the basis of remuneration received’, states:

‘On application, the Tax Office may allow a trader

1. whose total turnover (Paragraph 19(3)) in the preceding calendar year did not exceed EUR 500 000, or

2. who is exempt from the obligation to keep accounts and to draw up annual stock inventories under Paragraph 148 of the Abgabenordnung (Tax Code), or

3. whose turnover derives from an activity as a member of a liberal profession within the meaning of point 1 of Paragraph 18(1) of the Einkommensteuergesetz (Law on income tax),

to calculate the tax on the basis of the remuneration received rather than on the basis of the remuneration agreed (first sentence of Paragraph 16(1)).

…'

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

19 Kollaustraße, a civil-law company, leased a plot of land for industrial and commercial purposes of which it was itself the lessee.

20 Kollaustraße and its lessor had effectively waived the tax exemption for such rental turnover and therefore opted for their liability to VAT. Under Paragraph 20 of the UStG, they were authorised by the tax office to calculate VAT on the basis of the remuneration received, or, in other words, according to the cash-accounting scheme, and not on the basis of the remuneration agreed. With the rental contract, Kollaustraße had a proper permanent invoice.

21 From 2004, Kollaustraße's rental payments were partly deferred. Thus, it proceeded to pay part of its rent for the years 2009 to 2012 during the financial years 2013 to 2016. It was also released from the debt by the lessor in 2016.

22 The payments made all included 19% VAT and Kollaustraße – irrespective of the rental period for which the payments were intended – asserted its input tax deduction claim in the prepayment period or calendar year in which the payment was made.

23 During an audit, the tax office was of the opinion that the input tax deduction claim had already arisen with the performance of the transaction – in this case the monthly rental of the property – and should therefore have been asserted for the corresponding financial years.

24 Consequently, tax notices were issued for the financial years 2011 to 2015 and a provisional tax assessment for the 2016 financial year. In those notices, the tax to be deducted was calculated on the basis of the rent agreed each year, resulting in a tax adjustment totalling EUR 18 409.67 for the financial years 2013 to 2016.

25 It is pointed out that the tax notices for previous financial years have not been amended, as the assessment of the tax is time-barred. The VAT which had been included in the rent paid in 2013 and 2014, corresponding to the 2009 and 2010 rental periods, was not charged to Kollaustraße as input tax, since the tax office took the view that the right of deduction should have been relied on in the 2009 and 2010 financial years.

26 On 3 July 2017 Kollaustraße filed an objection to the tax notices issued for the financial years 2013 to 2016, which was rejected on 8 November 2017. On 28 November 2017 Kollaustraße then brought an action before the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), before which it claimed an infringement of the VAT Directive, arguing that if the supplier of goods or services calculates his or her tax on the basis of the remuneration received, the

recipient of the supply's right of deduction only arises at the time when the remuneration is paid.

27 In determining whether, if the supplier of goods or services calculates VAT on the basis of the remuneration received, the right of VAT deduction arises on completion of the supply or only on receipt of the remuneration, the referring court wonders whether the German rules under which the right of deduction must always be relied upon when the supply is made are compatible with EU law.

28 The referring court states that, under German legislation, the right of deduction arises when the goods or services are supplied, regardless of when the tax becomes chargeable to the supplier and regardless of whether the tax is calculated by the supplier on the basis of the remuneration agreed or on the basis of the remuneration received. It states, in that regard, that the German legislature has not made use of the option given to Member States in Article 167a of the VAT Directive, so that, under German law, the recipient of the supply of goods or services' right of deduction arises at the time the supply of goods or services takes place, even where the supplier is a taxable person who is taxable on the basis of the remuneration received.

29 However, the referring court has doubts as to the compatibility of German law with EU law in the light of Article 167 of the VAT Directive, under which the right of deduction arises only at the time when the deductible tax becomes chargeable.

30 It submits that German law is contrary to a strict application of Article 167 in so far as, while the national legislature has made use of the option given to Member States to provide that the tax becomes chargeable to certain taxable persons solely on receipt of the payment, it provides that the right of input tax deduction, even in that case, arises at the time the supply has been made, thereby severing the relationship between the chargeability of tax and the right of deduction.

31 The referring court considers that such strict application of Article 167 of the VAT Directive is supported by Article 226(7a) of that directive, which has not been transposed into national law. It states that, despite the Federal Republic of Germany not transposing Article 226(7a) of the Sixth Directive, legal writers maintain that it follows from that provision that the relationship between the chargeability of the tax and the right of deduction laid down in Article 167 of that directive is now mandatory.

32 Conversely, it could be considered, in its view, that German law is compatible with EU law if Article 167 of the VAT Directive does not lay down a mandatory rule, but merely contains a 'guiding idea'. Such an interpretation could emerge from the declaration in the minutes of the Council of the European Union and of the European Commission on Article 17(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the wording of which was reproduced in Article 167 of the VAT Directive. According to that declaration, Member States could derogate from the principle laid down in Article 17(1) where the supplier of the goods or services is taxed according to the VAT receipts received.

33 In the event that a Member State were to derogate from Article 167 of the VAT Directive, the referring court also questions whether the taxable person may, in such cases, in any event assert the right of input tax deduction during the tax year in which the right of input tax deduction would have arisen according to a strict application of that article when the taxable person no longer has the possibility of asserting that right in the relevant earlier tax period under national law.

34 In that regard, the referring court states that, under German law, a taxable person who has not deducted input tax cannot assert his or her right of deduction for a subsequent tax year. The referring court states that, accordingly, the right of deduction is not to be exercised where the input

tax can no longer be asserted retroactively on account of the expiry of the period for payment of the tax, as in the case before it. However, the referring court considers that Article 167 of the VAT Directive could require a different assessment in such a case. In the light of the fundamental importance of the right of deduction and in order to ensure the neutrality of VAT, it might prove necessary, in the view of the referring court, to allow a taxable person to deduct input tax in the tax year which results from the application of Article 167 even where national law derogates from it.

35 In those circumstances, the Finanzgericht Hamburg (Finance Court, Hamburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does Article 167 of [the VAT Directive] preclude a provision of national law according to which the right of input tax deduction already arises at the time the transaction is performed, even if, under national law, the tax claim against the supplier or service provider arises only when the remuneration is received and the remuneration has not yet been paid?

(2) If the first question is answered in the negative: does Article 167 of [the VAT Directive] preclude a provision of national law according to which the right of input tax deduction cannot be asserted for the tax period in which the remuneration has been paid if the tax claim against the supplier or service provider arises only when the remuneration is received, the service has already been provided in an earlier tax period and, under national law, due to the matter being time-barred, it is no longer possible to assert the input tax claim for that earlier tax period?’

Consideration of the questions referred

The first question

36 By its first question, the referring court asks, in essence, whether Article 167 of the VAT Directive must be interpreted as precluding national legislation which provides that the right of input tax deduction arises at the time the transaction takes place if, pursuant to a national derogation under point (b) of the first paragraph of Article 66 of that directive, the tax becomes chargeable to the supplier of goods or services only when the remuneration is received and has not yet been paid.

37 That court states that, under the first sentence of Article 15(1)(1) of the UStG, the right of deduction arises where the goods or services have been supplied without taking into account the point in time when the tax becomes chargeable to the supplier of the goods or services. It is of little importance, in particular, whether that supplier calculates the tax, pursuant to the first sentence of Article 16(1) of the UStG, on the basis of the remuneration agreed or that he or she calculates it, pursuant to Article 20 of the UStG, on the basis of the remuneration received.

38 As a preliminary point, it is necessary to address the referring court’s questions concerning the interpretation, arising from a declaration in the minutes of the Council and of the Commission on Article 17(1) of Directive 77/388, according to which Article 167 of the VAT Directive merely sets out a guiding idea and not a mandatory rule. In that regard, it must be borne in mind that such a declaration cannot be used for the purpose of interpreting a provision of secondary legislation where, as in the case in the main proceedings, no reference is made to the content of the declaration in the wording of the provision in question. The declaration therefore has no legal significance (judgment of 26 February 1991, *Antonissen*, C?292/89, EU:C:1991:80, paragraph 18).

39 According to the Court’s settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 27 January 2021, De Ruiter,

C?361/19, EU:C:2021:71, paragraph 39 and the case-law cited).

40 As regards, in the first place, the wording of Article 167 of the VAT Directive, it is clear and unambiguous, as the Advocate General observed in point 49 of his Opinion. Article 167 lays down a general rule that the origin of the right of input VAT deduction, for the recipient of goods or services, is determined at the time when the corresponding VAT becomes chargeable to the supplier of goods or services.

41 As regards, in the second place, the context of that provision, it should be recalled that, under Article 63 of the VAT Directive, the chargeable event is to occur and VAT is to become chargeable when the goods or the services are supplied.

42 Nevertheless, point (b) of the first paragraph of Article 66 of the VAT Directive states that Member States may, by way of derogation inter alia from Article 63, provide that VAT is to become chargeable, in respect of certain transactions or certain categories of taxable person no later than the time the payment is received.

43 Since it constitutes a derogation from the rule laid down in Article 63 of the VAT Directive, Article 66 of that directive must be interpreted strictly (judgment of 16 May 2013, *TNT Express Worldwide (Poland)*, C?169/12, EU:C:2013:314, paragraph 24 and the case-law cited).

44 Although the fact that the EU legislature substantially extended the scope of the permitted derogations suggests that it intended to allow the Member States a wide margin of discretion, that does not allow the inference that a Member State has a discretion to establish a time at which the VAT becomes chargeable other than one of those specified in points (a), (b) and (c) of Article 66 of the VAT Directive (judgment of 16 May 2013, *TNT Express Worldwide (Poland)*, C?169/12, EU:C:2013:314, paragraph 25 and the case-law cited).

45 In order to ensure that Article 66(1)(b) of the VAT Directive is interpreted consistently with Article 167 of that directive, which provides that the right of deduction is to arise at the time the tax becomes chargeable, it must be concluded that, when, pursuant to Article 66(1)(b), the tax becomes chargeable no later than the time the payment is received, the right of deduction also arises at the time when such payment is received.

46 In the third place, that conclusion is supported by the objective pursued by the VAT Directive. First, it is important to note that that directive establishes a common system of VAT based, inter alia, on a uniform definition of taxable transactions. In particular, recital 24 of that directive states that the concepts of ‘chargeable event’ and of the ‘chargeability of VAT’ should be harmonised if the introduction of the common system of VAT and of any subsequent amendments thereto are to take effect at the same time. The European Union legislature thereby intended maximum harmonisation of the date on which liability to pay VAT arises in all the Member States in order to ensure the uniform collection of that tax (judgment of 2 May 2019, Budimex, C?224/18, EU:C:2019:347, paragraphs 21 and 22).

47 Second, it should be recalled that the right of VAT deduction is a fundamental principle of the common system of VAT, which in principle may not be limited, and is exercisable immediately in respect of all the taxes charged on the taxable person’s input transactions (judgment of 21 November 2018, V?dan, C?664/16, EU:C:2018:933, paragraph 37 and the case-law cited).

48 That system is designed to relieve the trader entirely of the burden of the VAT due or paid in the course of all his or her economic activities. The common system of VAT consequently ensures that all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT, are taxed in a wholly neutral way (judgment of 21 November 2018, V?dan,

C?664/16, EU:C:2018:933, paragraph 38 and the case-law cited).

49 It should be noted, in that regard, that the conclusion in paragraph 45 of the present judgment allows for application in accordance with those principles where the taxable person is able to obtain the right of input VAT deduction from the time when the tax becomes chargeable to the supplier of goods or services.

50 That conclusion is not called into question by the argument put forward by the German Government that, since it has not made use of the option provided for in Article 167a of the VAT Directive, the right of deduction arises as soon as the supply of goods or services is made in accordance with the relationship between Articles 63 and 167 of that directive, irrespective of whether the tax becomes chargeable to certain taxable persons when the payment is received.

51 As the Advocate General observed in point 51 of his Opinion, if the EU legislature had intended that the right of deduction should invariably arise at the time of the supply of goods or services, it could have linked the timing of the right of deduction to the chargeable event which is not modified by the special rules contained in Articles 64 to 67 of the VAT Directive, rather than to the time the VAT becomes chargeable, which is subject to those rules.

52 Nor can the conclusion in paragraph 45 of the present judgment be called into question by the argument put forward by the German Government that Article 167a of the VAT Directive would not have independent scope alongside Article 167 of that directive if the right of deduction were to arise on receipt of the payment in cases covered by point (b) of the first paragraph of Article 66 of that directive.

53 It should be pointed out that the purpose underlying the insertion of that Article 167a was to enable all the Member States to introduce a derogation concerning the date on which the right of deduction may be exercised by taxable persons declaring VAT in the context of an optional cash accounting scheme intended to simplify the payment of VAT for small businesses (judgment of 16 May 2013, TNT Express Worldwide (Poland), C?169/12, EU:C:2013:314, paragraph 34).

54 Article 167a states that Member States may provide within an optional scheme that the right of deduction of a taxable person whose VAT solely becomes chargeable in accordance with Article 66(b) is to be postponed until the VAT on the goods or services supplied to him or her has been paid to his or her supplier.

55 Article 167a therefore allows taxable persons whose VAT solely becomes chargeable in accordance with Article 66(1)(b) of the VAT Directive to delay their right of deduction until payment is made to their suppliers of goods or services.

56 It should be noted, in that regard, that, as is apparent from recital 4 of Directive 2010/45, Article 167a was inserted into the VAT Directive to help small and medium-sized enterprises that encounter difficulties in paying VAT to the competent authority before they have received payment from their customers, and to allow Member States to introduce an optional cash accounting scheme that does not have a negative effect on cash flow relating to their VAT receipts.

57 Article 167a of the VAT Directive thus forms part of an optional scheme which the Member States may provide for, and whose application is itself part of the derogation already provided for moreover in Article 66(1)(b) of that directive. It is therefore only in the circumstances provided for in Article 167a that it is possible to sever the relationship between the chargeability of tax to the supplier of goods or services and the taxable person’s immediate right of input VAT deduction.

58 In that regard, as the Advocate General observed, in essence, in point 66 of his Opinion,

Article 167a of the VAT Directive has a much more limited scope than that of point (b) of the first paragraph of Article 66 of that directive, since the latter was not initially adopted with cash accounting schemes for small and medium-sized undertakings in mind and does not lay down any turnover ceiling or require that the derogation be optional for the taxable persons concerned.

59 Therefore, it must be held that Article 167a concerns a specific and very limited derogation which cannot call into question the conclusion in paragraph 45 above.

60 In the present case, it should be noted, first, that the Federal Republic of Germany has made use of the option provided for in point (b) of the first paragraph of Article 66 of the VAT Directive. It is apparent from the order for reference that the German legislature exercised its discretion under that provision by providing, in point 1 of Paragraph 13(1)(b) of the UStG, that, in the case of supplies and other services, the tax is to become chargeable on the basis of remuneration received upon expiry of the prepayment period in which the remuneration was received.

61 Secondly, as regards the question whether the transactions and taxable persons at issue in the main proceedings fall within the ‘transactions’ or ‘categories of taxable person’ referred to in Article 66(1)(b) of the VAT Directive, it is apparent from the order for reference that Kollaustraße and its lessor have been authorised by the tax office under Paragraph 20 of the UStG to charge VAT not on the basis of the remuneration agreed but on the basis of the remuneration received. They were therefore, subject to verifications by the referring court, taxable persons on whom VAT becomes chargeable no later than the time the payment is received, within the meaning of point (b) of the first paragraph of Article 66 of the VAT Directive.

62 Accordingly, subject to the verifications which are for the referring court to carry out as to the conditions for the application of the national derogation under point (b) of the first paragraph of Article 66 of the VAT Directive and Article 167 of that directive, it appears that Kollaustraße’s right of deduction arose at the time when the payment was received by its lessor.

63 In the light of the foregoing considerations, the answer to the first question is that Article 167 of the VAT Directive must be interpreted as precluding national legislation which provides that the right of input tax deduction arises at the time the transaction takes place if, pursuant to a national derogation under point (b) of the first paragraph of Article 66 of that directive, the tax becomes chargeable to the supplier of goods or services only when the remuneration is received and has not yet been paid.

The second question

64 Having regard to the answer given to the first question, there is no need to answer the second question.

Costs

65 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

Article 167 of Council Directive 2006/112/EC of 28 November 2006 on the common system of valued added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as precluding national legislation which provides that the right of input tax deduction arises at the time the transaction takes place if, pursuant to a national derogation under point (b) of the first paragraph of Article 66 of Directive 2006/112, such as

amended by Directive 2010/45, the tax becomes chargeable to the supplier of goods or services only when the remuneration is received and has not yet been paid.

[Signatures]

* Language of the case: German.