Provisional text

JUDGMENT OF THE COURT (Tenth Chamber)

6 October 2022 (*)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Deductions of input VAT – Goods and services used by the taxable person to produce capital goods – Articles 184 to 187 – Adjustment of deductions – Obligation to adjust deductions of VAT in the event of that taxable person being placed in liquidation and removed from the register of VAT payers)

In Case C?293/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 28 April 2021, received at the Court on 7 May 2021, in the proceedings

UAB ‘Vittamed technologijos’, in liquidation,

v

Valstybin? mokes?i? inspekcija,

intervener:

Kauno apskrities valstybin? mokes?i? inspekcija,

THE COURT (Tenth Chamber),

composed of I. Jarukaitis, President of the Chamber, D. Gratsias and Z. Csehi (Rapporteur), Judges,

Advocate General: T. ?apeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Lithuanian Government, by K. Dieninis and V. Kazlauskait?-Šven?ionien?, acting as Agents,

– the European Commission, by J. Jokubauskait? and L. Lozano Palacios, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 184 to 187 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; ‘the VAT Directive’).

2 The request has been made in proceedings between UAB ‘Vittamed technologijos’, in liquidation (‘Vittamed’), and the Valstybin? mokes?i? inspekcija prie Lietuvos Respublikos finans? ministerijos (State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania), concerning the obligation to adjust the deduction of value added tax (VAT) on goods and services in respect of which the right of deduction had been exercised and which had been acquired for the purposes of producing capital goods which ultimately have not and will never be used for the intended taxable economic activity, as a result of the decision to place the taxable person in liquidation and of the taxable person being removed from the register of VAT payers.

Legal context

European Union law

3 Article 167 of the VAT Directive is worded as follows:

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

4 Article 168(a) of that directive provides:

‘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’.

5 Chapter 5 of Title X of the VAT Directive, entitled ‘Adjustment of deductions’, contains, inter alia, Articles 184, 185 and 187.

6 Article 184 of that directive provides:

‘The initial deduction shall be adjusted where it is higher or lower than that to which the taxable person was entitled.’

7 Article 185 of the VAT Directive provides:

‘1. Adjustment shall, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled or price reductions are obtained.

2. By way of derogation from paragraph 1, no adjustment shall be made in the case of transactions remaining totally or partially unpaid or in the case of destruction, loss or theft of property duly proved or confirmed, or in the case of goods reserved for the purpose of making gifts of small value or of giving samples, as referred to in Article 16.

However, in the case of transactions remaining totally or partially unpaid or in the case of theft, Member States may require adjustment to be made.’

8 Article 186 of that directive states:

‘Member States shall lay down the detailed rules for applying Articles 184 and 185.’

9 Article 187 of the VAT directive states:

‘1. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured.

Member States may, however, base the adjustment on a period of five full years starting from the time at which the goods are first used.

In the case of immovable property acquired as capital goods, the adjustment period may be extended up to 20 years.

2. The annual adjustment shall be made only in respect of one-fifth of the VAT charged on the capital goods, or, if the adjustment period has been extended, in respect of the corresponding fraction thereof.

The adjustment referred to in the first subparagraph shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired, manufactured or, where applicable, used for the first time.’

Lithuanian law

10 Point 1 of Article 58(1) of the Lietuvos Respublikos prid?tin?s vert?s mokes?io ?statymas (Law of the Republic of Lithuania on value added tax) of 5 March 2002 (Žin., 2002, No 35-1271), in the version applicable to the dispute in the main proceedings (‘the Law on VAT’), provides:

‘A VAT payer shall have the right to deduct input and/or import VAT on goods and/or services, provided that the goods and/or services are intended for use in the following activities of the VAT payer:

… supply of goods and/or services on which VAT is chargeable …’

11 Article 66(2) of the Law on VAT provides:

‘When the goods and/or services, the input and/or import VAT whereon (and where they were manufactured by the person himself – the input and/or import VAT on goods and/or services used for manufacturing) was wholly or partly deducted, have been started to be used for activities other than those specified in paragraph 1 of Article 58 of this Law or have been lost, the VAT deductions shall be adjusted in the VAT return for the tax period in which the above circumstances became known by increasing the VAT amount payable into the budget or by reducing the VAT amount refundable from the budget accordingly …’

12 Article 69(1) of the Law on VAT provides:

‘When a taxable person is being removed from the register of VAT payers or when a VAT payer is being wound up due to liquidation, VAT deductions shall be adjusted, in accordance with the procedure established in Articles 66 and 67 of this Law, in the VAT return of the person who is being removed from the register of VAT payers or who is in liquidation, and the deducted input and/or import VAT on goods and/or services, including capital assets, which will no longer be used for the activities specified in paragraph 1 of Article 58 of this Law, shall be returned to the budget’.

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

13 Vittamed is a company established in Lithuania that was engaged in technical scientific research and the practical applications thereof.

14 From 1 March 2012, that company did not carry out any supplies of goods or services on which VAT was chargeable.

15 In 2012 and 2013, Vittamed acquired, inter alia, goods and services in connection with the realisation of an international project funded by the European Union, the objective of which was to develop a prototype of a medical diagnostic and monitoring device and subsequently to place that device on the market. Eight invoices were thus issued to it. It deducted EUR 87 987 of input VAT paid in respect of the supply of those goods and services. The project concerned was completed on 31 December 2013.

16 Vittamed used those goods and services by producing intangible capital goods (licences) and tangible capital goods (prototype devices). It sought to use those capital goods as part of its future taxable activity.

17 Following the conclusion of that project, Vittamed operated at a loss in 2014 and 2015, and the previous losses recorded by that company increased continually. In view of those loss-making years and the absence of orders and potential income, it was decided to discontinue that company's activities. For that reason, Vittamed's sole shareholder decided, in August 2015, to place the company in liquidation, after it had been concluded that Vittamed's innovative scientific activities would not be profitable.

18 On 10 September 2015, Vittamed acquired the legal status of a 'legal entity in liquidation'.

19 On 23 September 2015, Vittamed submitted a request to be removed from the register of VAT payers and filed a VAT return reserved for persons who are being removed from the register of VAT payers, in respect of the final tax period from 1 September to 23 September 2015. In that VAT return, Vittamed did not adjust the VAT deduction in respect of the balance of any goods or services remaining unsold.

20 On the same day, Vittamed was removed from the register of VAT payers.

21 Pursuant to an inspection order of 28 December 2017, Vittamed was subject to a tax inspection by the Kauno apskrities valstybin? mokes?i? inspekcija (Kaunas District State Tax Inspectorate, Lithuania).

22 By decision of 24 January 2019, the Kaunas District State Tax Inspectorate found, in essence, that when the decision to place Vittamed in liquidation was taken, Vittamed was under an obligation to adjust the deduction of input VAT and to return to the budget the VAT on acquired goods or services which would not be used for activities subject to VAT. Consequently, it ordered Vittamed to pay an additional EUR 87 987 in VAT plus EUR 30 427 in default interest, together with a fine of EUR 8 798, corresponding to 10% of the VAT due.

23 Vittamed filed an objection to that decision with the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania on the ground that, according to the case-law of the Court, where costs are incurred in preparation for an economic activity, deduction of input VAT may be claimed even where that economic activity is not taken up and the intended taxable transactions ultimately do not take place.

24 By decision of 19 April 2019, the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania upheld the decision of the Kaunas District State Tax Inspectorate.

25 Vittamed lodged a complaint with the Mokestini? gin?? komisija prie Lietuvos Respublikos Vyriausyb?s (Tax Disputes Commission under the Government of the Republic of Lithuania). By decision of 20 June 2019, the latter dismissed that complaint as unfounded.

26 Vittamed brought an action against that decision before the Vilniaus apygardos administracinis teismas (Vilnius Regional Administrative Court, Lithuania), which was dismissed by judgment of 10 October 2019.

27 Vittamed brought an appeal against that judgment before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), which is the referring court.

28 The referring court expresses doubts as to the existence of an obligation to adjust the deductions of VAT in the dispute in the main proceedings, notwithstanding the fact that the sole shareholder of the taxable person decided to place it in liquidation and, as a result of that decision, the taxable person submitted a request to be removed from the register of VAT payers, which was granted. In that regard, it points to an apparent contradiction in the Court’s case-law.

29 On the one hand, referring, first of all, to paragraph 20 of the judgment of 9 July 2020, *Finanzamt Bad Neuenahr-Ahrweiler* (C?374/19, EU:C:2020:546), the referring court recalls that the adjustment mechanism provided for in Articles 184 to 187 of the VAT Directive aims to establish a close and direct relationship between the right to deduct input VAT and the use of the goods or services concerned for taxed output transactions. Relying, next, on paragraph 38 of the judgment of 11 April 2018, *SEB bankas* (C?532/16, EU:C:2018:228), the referring court notes that, under the common system of VAT, only the input taxes on goods or services used by a taxable person for its taxable transactions may be deducted. In that regard, the referring court states that, according to paragraph 56 of the judgment of 31 May 2018, *Kollroß and Wirtl* (C?660/16 and C?661/16, EU:C:2018:372), Article 185(1) of the VAT Directive establishes the principle that such adjustment is to be made, in particular, where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted. Lastly, the referring court cites paragraphs 44 to 46 of the judgment of 12 November 2020, *ITH Comercial Timi?oara* (C?734/19, EU:C:2020:919), to observe that that close and direct relationship which must exist between the right to deduct input VAT and the performance of the planned taxable transactions is broken if the taxable person no longer intends to use the goods and services concerned to carry out taxable output transactions or uses them to carry out exempt transactions.

30 The referring court states in that regard that the decision adopted by the sole shareholder of the taxable person concerned to place it in liquidation and the request submitted by that taxable person to be removed from the register of VAT payers objectively confirm that that taxable person no longer intends to use the goods or services in respect of which the VAT paid was deducted in taxable economic activities, which constitutes a change, after the VAT return was made, in the factors used to determine the amount to be deducted, within the meaning of Article 185(1) of the VAT Directive. That court notes that such an assessment is consistent with Article 69(1) of the Law on VAT.

31 On the other hand, the referring court refers to the case-law stemming from the judgments of 15 January 1998, *Ghent Coal Terminal* (C?37/95, EU:C:1998:1, paragraphs 19 and 20); of 28 February 2018, *Imofloresmira – Investimentos Imobiliários* (C?672/16, EU:C:2018:134, paragraphs 40 and 42); and of 17 October 2018, *Ryanair* (C?249/17, EU:C:2018:834, paragraph 25), according to which the right of deduction is retained in principle, even if subsequently, by

reason of circumstances beyond its control, the taxable person does not use the goods and services which gave rise to a deduction in the context of taxable transactions, emphasising that a taxable person retains the right of deduction where that right has arisen, even if that taxable person could not, for reasons beyond its control, use the goods or services giving rise to the deduction in the context of taxed transactions. It considers that the view may be taken, in accordance with that case-law, that, except in the case referred to in the second subparagraph of Article 185(2) of the VAT Directive, the initial right to deduct VAT is retained and that there is no obligation to make an adjustment of VAT in the case where goods or services have not been used in the course of the economic activity concerned due to circumstances beyond the control of the taxable person.

32 In that regard, the referring court is uncertain as to whether the decision to place the taxable person in liquidation and the request to be removed from the register of VAT payers, which are submitted, in principle, by that taxable person on its own initiative, make it possible to establish the existence of ‘circumstances beyond the control’ of the taxable person, within the meaning of the case-law cited in paragraph 31 above. That court observes that, in the present case, Vittamed stated that the decision to place it in liquidation had been taken due to ongoing losses, the absence of orders and potential revenues and the sole shareholder’s doubts as to the profitability of the intended economic activity. The tax authorities and the other institutions before which the main proceedings were brought took the view that the decision of Vittamed’s sole shareholder to place it in liquidation had been adopted without providing the slightest evidence that Vittamed’s activities were not profitable and that that decision and the request to be removed from the register of VAT payers did not constitute ‘circumstances beyond the control’ of Vittamed, within the meaning of the case-law cited in paragraph 31 above.

33 However, referring to paragraph 35 of the judgment of 12 November 2020, *ITH Comercial Timi?oara* (C?734/19, EU:C:2020:919), the referring court recalls that, according to the Court’s case-law, it is not for the tax authorities to assess the soundness of the taxable person’s reasons for abandoning the economic activity initially planned, since the common system of VAT ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT.

34 Consequently, the referring court is uncertain how to determine whether there are ‘circumstances beyond the taxable person’s control’, within the meaning of the case-law cited in paragraph 31 above, in the circumstances of the dispute in the main proceedings. In particular, it wishes to know whether a mere declaration by the taxable person is sufficient for the purposes of such a classification or whether it is generally necessary to assess those circumstances where the goods or services have not been used and will never be used as a result of that taxable person being placed in liquidation.

35 Lastly, the referring court observes that the Court stated, in paragraph 25 of the judgment of 17 October 2018, *Ryanair* (C?249/17, EU:C:2018:834), that the right to deduct, once it has arisen, is retained even if the intended economic activity was not carried out and, therefore, did not give rise to taxed transactions ‘or’ the taxable person was unable to use the goods or services which gave rise to a deduction in the context of taxable transactions by reason of circumstances beyond its control. According to the referring court, the use of the coordinating conjunction ‘or’ in that paragraph 25 is intended to distinguish between two separate situations: first, where economic activities were not carried out after the right to deduct had arisen, and, second, where goods or services in respect of which the right to deduct was exercised were not used in the course of economic activities. The fact that the goods or services were not used ‘by reason of circumstances beyond [the control of a taxable person]’ is mentioned only in the second situation, which, according to the referring court, does not cover the placement of a taxable person in liquidation. It

refers, in that regard, to the judgment of 29 February 1996, *INZO* (C?110/94, EU:C:1996:67).

36 In those circumstances, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Are Articles 184 to 187 of [the VAT Directive] to be interpreted as meaning that a taxable person is (or is not) obliged to adjust deductions of [VAT] charged on the acquisition of goods and services for the purposes of producing capital goods in the case where those goods are no longer intended to be used in the course of taxable economic activities because the owner (shareholder) of the taxable person decides to place it in liquidation and that taxable person submits a request that it be removed from the register of VAT payers?

Is the answer to that question affected by the reasons for deciding to liquidate the taxable person, namely the fact that the decision to place that person in liquidation was taken due to growing losses, the absence of orders and the shareholder’s doubts as to the profitability of the planned (intended) economic activity?’

Consideration of the question referred

37 By its question, first, the referring court asks, in essence, whether Articles 184 to 187 of the VAT Directive must be interpreted as meaning that a taxable person is under an obligation to adjust deductions of input VAT relating to the acquisition of goods or services intended to produce capital goods in the case where, as a result of the decision of the owner or sole shareholder of that taxable person to place it in liquidation and of the taxable person’s request to be removed, and it being removed, from the register of VAT payers, the capital goods produced have not been used – and will never be used – in the course of taxable economic activities. Second, it asks, in essence, whether the reasons for the decision to place that taxable person in liquidation and, consequently, for the abandonment of the intended taxable economic activity, such as constantly growing losses, the absence of orders and the doubts of the taxable person’s shareholder as to the profitability of the intended economic activity, have any bearing on the taxable person’s obligation to adjust the deductions of VAT concerned. Lastly, it asks whether the mere declaration by the taxable person concerned that those reasons exist is sufficient or whether, on the contrary, the existence of those reasons must be established by evidence.

38 In the first place, according to settled case-law of the Court, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by EU legislation (judgment of 12 April 2018, *Biosafe – Indústria de Reciclagens*, C?8/17, EU:C:2018:249, paragraph 27 and the case-law cited).

39 The rules governing deduction are intended to relieve the taxable person entirely of the burden of the VAT payable or paid in the course of all its economic activities. The common system of VAT therefore ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that those activities are themselves, in principle, subject to VAT (judgment of 9 July 2020, *Finanzamt Bad Neuenahr-Ahrweiler*, C?374/19, EU:C:2020:546, paragraph 18).

40 As the Court has repeatedly held, the right to deduct provided for in Article 167 et seq. of the VAT Directive is an integral part of the VAT scheme and may not, in principle, be limited. In particular, the right to deduct is exercisable immediately in respect of all the taxes charged on input transactions (judgment of 12 April 2018, *Biosafe – Indústria de Reciclagens*, C?8/17, EU:C:2018:249, paragraph 29 and the case-law cited).

41 Under the common system of VAT, only the input taxes on goods or services used by a taxable person for its taxed transactions may be deducted. The deduction of input taxes is linked to the collection of output taxes (judgment of 9 July 2020, *Finanzamt Bad Neuenahr-Ahrweiler*, C?374/19, EU:C:2020:546, paragraph 21 and the case-law cited).

42 It is important to recall that it is the acquisition of goods or services by a taxable person acting as such that gives rise to the application of the VAT system and therefore of the deduction mechanism. The use to which the goods or services are put, or intended to be put, merely determines the extent of the initial deduction to which the taxable person is entitled under Article 168 of the VAT Directive and the extent of any adjustments in the course of the following periods; it does not affect whether the right of deduction arises (judgment of 12 November 2020, *ITH Comercial Timi?oara*, C?734/19, EU:C:2020:919, paragraph 33 and the case-law cited).

43 The Court has also repeatedly held that the right of deduction, once it has arisen, is retained even if, subsequently, the intended economic activity was not carried out and, therefore, did not give rise to taxable transactions (judgments of 29 February 1996, *INZO*, C?110/94, EU:C:1996:67, paragraph 20, and of 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 25), or if, by reason of circumstances beyond its control, the taxable person was unable to use the goods or services which gave rise to the deduction in the context of taxable transactions (judgments of 15 January 1998, *Ghent Coal Terminal*, C?37/95, EU:C:1998:1, paragraph 20; of 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 25; and of 12 November 2020, *ITH Comercial Timi?oara*, C?734/19, EU:C:2020:919, paragraph 34 and the case-law cited).

44 Any other interpretation would be contrary to the principle that VAT should be neutral as regards the tax burden on a business. It would be liable to create, as regards the tax treatment of the same investment activities, unjustified differences between businesses already carrying out taxable transactions and other businesses seeking by investment to commence activities which will in future be a source of taxable transactions. Likewise, arbitrary differences would be established between the latter businesses, in that the final acceptance of the deductions would depend on whether or not the investment resulted in taxed transactions (judgments of 29 February 1996, *INZO*, C?110/94, EU:C:1996:67, paragraph 22, and of 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 25).

45 However, as regards the question how the principle emphasised in the judgment of 29 February 1996, *INZO* (C?110/94, EU:C:1996:67), to the effect that the right of deduction is retained even where an activity is brought to an end before it gives rise to any taxable transactions, must be combined with the rules of the VAT Directive regarding the adjustment of deductions, it should be recalled that the Court has, first, held that the adjustment mechanism provided for in Articles 184 to 187 of the VAT Directive is an integral part of the VAT deduction scheme established by that directive and aims to establish a close and direct relationship between the right to deduct the input VAT paid and the use of the goods or services concerned for taxed output transactions. Second, the Court has pointed out that, where goods or services acquired by a taxable person are used for the purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected or input tax deducted (order of 18 May 2021, *Skellefteå Industrihus*, C?248/20, EU:C:2021:394, paragraph 42 and the case-law cited).

46 The Court has also pointed out that Article 184 of the VAT Directive defines the coming into existence of an obligation to make a VAT adjustment as broadly as possible and that its wording does not exclude, a priori, any foreseeable situation of undue deductions, since the general scope of the adjustment obligation is supported by the express enumeration of the derogations provided for in Article 185(2) of that directive (see, to that effect, order of 18 May 2021, *Skellefteå Industrihus*, C?248/20, EU:C:2021:394, paragraph 43 and the case-law cited).

47 Furthermore, the Court has stated that, where, by reason of circumstances beyond its control, the taxable person did not make use of a service or goods, such as immovable property, which gave rise to a deduction in the context of taxed transactions, it is not sufficient, in order to establish the existence of a 'change' for the purposes of Article 185 of the VAT Directive, for that property to remain empty after the termination of the lease to which it was subject, even where it has been established that the taxable person still intends to use it for a taxed activity and undertakes the necessary steps to that end, since that would be tantamount to restricting the right of deduction through the provisions applicable to adjustments (judgment of 28 February 2018, *Imofloresmira – Investimentos Imobiliários*, C?672/16, EU:C:2018:134, paragraph 47; order of 18 May 2021, *Skellefteå Industrihus*, C?248/20, EU:C:2021:394, paragraph 44).

48 Thus, if the taxable person no longer plans to use the goods or services concerned in order to carry out taxed output transactions or uses them to carry out exempt transactions, which is a matter for the referring court to ascertain, the close and direct relationship which must exist between the right to deduct the input VAT paid and the carrying out of the planned taxed transactions is broken, and it must result in the application of the adjustment mechanism provided for in Articles 184 to 187 of the VAT Directive (see, to that effect, order of 18 May 2021, *Skellefteå Industrihus*, C?248/20, EU:C:2021:394, paragraphs 45 and 46 and the case-law cited).

49 In the present case, it is apparent from the request for a preliminary ruling that, as a result of its being placed in liquidation and removed from the register of VAT payers, the taxable person concerned no longer has – and will never have – any intention of using the capital goods produced for the purposes of taxed transactions. If that situation is confirmed, which is a matter for the referring court to ascertain, the 'close and direct relationship', within the meaning of the case-law referred to in paragraph 45 above, which must exist between the right to deduct the input VAT paid and the carrying out of taxed output transactions is broken, and the adjustment mechanism provided for in Articles 184 to 187 of the VAT Directive must be applied.

50 However, that might not be the case where the placing of the taxable person concerned in liquidation has nevertheless resulted in taxed transactions being carried out, for example the sale of assets for the purposes of discharging the taxable person's debts, even though that does not form part of the economic activity initially planned by that taxable person.

51 In that regard, the Court has held that, since the activity must be considered per se and without regard to its purpose or results, the mere fact that the initiation of insolvency proceedings in respect of a taxable person changes, in accordance with the rules laid down in national law, the purposes of that taxable person's transactions, in the sense that those purposes no longer include the long-term operation of its business, but relate solely to its liquidation for the purposes of extinguishing debts followed by its dissolution, cannot, in itself, affect the economic nature of the transactions carried out in the course of that business (judgment of 3 June 2021, *Administra?ia Jude?ean? a Finan?elor Publice Suceava and Others*, C?182/20, EU:C:2021:442, paragraph 38).

52 The Court has therefore ruled that Articles 184 to 186 of the VAT Directive must be interpreted as precluding national legislation or practice whereby the initiation of insolvency proceedings in respect of an economic operator, entailing the liquidation of its assets for the

benefit of its creditors, automatically places an obligation on that operator to adjust the VAT deductions which it has made in respect of goods and services acquired before it was declared insolvent, where the initiation of those proceedings is not such as to prevent that operator's economic activity, within the meaning of Article 9 of that directive, from being continued, in particular for the purposes of the liquidation of the undertaking concerned (judgment of 3 June 2021, *Administra?ia Jude?ean? a Finan?elor Publice Suceava and Others*, C?182/20, EU:C:2021:442, paragraph 45).

53 In the present case, the request for a preliminary ruling states that the taxable person's goods or services remained 'unsold', although this is a matter for the referring court to ascertain.

54 In the light of the foregoing considerations, the answer to the first part of the question referred is that Articles 184 to 187 of the VAT Directive must be interpreted as meaning that a taxable person is under an obligation to adjust deductions of input VAT relating to the acquisition of goods or services intended to produce capital goods in the case where, as a result of the decision of the owner or sole shareholder of that taxable person to place it in liquidation and of the taxable person's request to be removed, and it being removed, from the register of VAT payers, the capital goods produced have not been used – and will never be used – in the course of taxable economic activities, which is a matter for the referring court to ascertain.

55 In the second place, according to the Court's case-law, Articles 167, 168, 184 and 185 of the VAT Directive must be interpreted as meaning that the right to deduct input VAT on goods or services acquired with a view to carrying out taxable transactions is maintained where the investment projects initially planned have been abandoned owing to circumstances beyond the taxable person's control, and there is no need to adjust that VAT if the taxable person still intends to use those goods for the purposes of a taxable transaction (judgment of 12 November 2020, *ITH Comercial Timi?oara*, C?734/19, EU:C:2020:919, paragraph 46).

56 The application of that case-law presupposes that the taxable person still intends to use those goods or services for the purposes of taxable transactions, a condition which does not appear to be satisfied in a case such as that in the main proceedings, where, as is apparent from the request for a preliminary ruling, the taxable person has been placed in liquidation and has been removed from the register of VAT payers.

57 Therefore, the fact that the placement of the taxable person in liquidation and, consequently, the abandonment of the planned taxable economic activity may be justified for reasons which may be characterised as circumstances beyond the taxable person's control has no bearing on the latter's obligation to adjust the deductions of VAT.

58 Furthermore, it is not for the tax authorities to assess the soundness of the taxable person's reasons for abandoning the economic activity initially planned, since the common system of VAT ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT (judgment of 12 November 2020, *ITH Comercial Timi?oara*, C?734/19, EU:C:2020:919, paragraph 35 and the case-law cited).

59 In the light of that case-law, it is not necessary to examine the remainder of the second part of the question, that is, whether the mere declaration of reasons for the decision to place the taxable person in liquidation is sufficient.

60 In the light of the foregoing considerations, the answer to the second part of the question referred is that the reasons for the decision to place that taxable person in liquidation and, consequently, for the abandonment of the intended taxable economic activity, such as constantly growing losses, the absence of orders and the doubts of the taxable person's shareholder as to

the profitability of the intended economic activity, have no bearing on the taxable person's obligation to adjust the deductions of VAT concerned, in so far as that taxable person no longer has – and will never have – any intention of using the capital goods for the purposes of taxable transactions.

61 In the light of all the foregoing considerations, the answer to the question referred is that Articles 184 to 187 of the VAT Directive must be interpreted as meaning that a taxable person is under an obligation to adjust deductions of input VAT relating to the acquisition of goods or services intended to produce capital goods in the case where, as a result of the decision of the owner or sole shareholder of that taxable person to place it in liquidation and of the taxable person's request to be removed, and it being removed, from the register of VAT payers, the capital goods produced have not been used – and will never be used – in the course of taxable economic activities. The reasons for the decision to place that taxable person in liquidation and, consequently, for the abandonment of the intended taxable economic activity, such as constantly growing losses, the absence of orders and the doubts of the taxable person's shareholder as to the profitability of the intended economic activity, have no bearing on the taxable person's obligation to adjust the deductions of VAT concerned, in so far as that taxable person no longer has – and will never have – any intention of using the capital goods for the purposes of taxable transactions.

Costs

62 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 (Tenth Chamber) hereby rules:

Articles 184 to 187 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

must be interpreted as meaning that a taxable person is under an obligation to adjust deductions of input value added tax (VAT) relating to the acquisition of goods or services intended to produce capital goods in the case where, as a result of the decision of the owner or sole shareholder of that taxable person to place it in liquidation and of the taxable person's request to be removed, and it being removed, from the register of VAT payers, the capital goods produced have not been used – and will never be used – in the course of taxable economic activities. The reasons for the decision to place that taxable person in liquidation and, consequently, for the abandonment of the intended taxable economic activity, such as constantly growing losses, the absence of orders and the doubts of the taxable person's shareholder as to the profitability of the intended economic activity, have no bearing on the taxable person's obligation to adjust the deductions of VAT concerned, in so far as that taxable person no longer has – and will never have – any intention of using the capital goods for the purposes of taxable transactions.

[Signatures]

* Language of the case: Lithuanian.