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Request for a preliminary ruling from the Mokestinii gin?? komisija prie Lietuvos Respublikos vyriausyb?s (Lithuania) lodged on 29 January 2021 — ‘ARVI’ ir ko UAB v Valstybin? mokes?i? inspekcija prie Lietuvos Respublikos finans? ministerijos

(Case C-56/21)

(2021/C 128/30)

Language of the case: Lithuanian

Referring court

Mokestinii gin?? komisija prie Lietuvos Respublikos vyriausyb?s

Parties to the main proceedings

Applicant: ‘ARVI’ ir ko UAB

Defendant: Valstybin? mokes?i? inspekcija prie Lietuvos Respublikos finans? ministerijos

Questions referred

1.

Is national legislation under which a VAT payer can have the right to opt to charge VAT in respect of VAT-exempt immovable property only if the property is transferred to a taxable person who has registered as a VAT payer as at the time of conclusion of the transaction compatible with the interpretation of Article 135 and Article 137 of the Directive (1) and the principles of fiscal neutrality and effectiveness?

2.

If the answer to the first question is in the affirmative, is an interpretation of the provisions of national law that the supplier of immovable property must adjust the deduction of the VAT borne on the acquisition of the immovable property transferred, when he has opted to charge VAT in respect of the supply of the immovable property and such option is impossible under the national requirements owing to a single condition, that is to say, owing to the purchaser not having the status of registered VAT payer, consistent with the provisions of the Directive governing the supplier’s right to deduct VAT and adjustment of the deduction and with the principles of neutrality of VAT and effectiveness?

3.

Is an administrative practice under which, in circumstances such as those in the main proceedings, the supplier of immovable property is required to adjust the deduction of input tax on the acquisition/production of the immovable property, since the transaction for the sale of that property is regarded as a VAT-exempt supply of immovable property owing to the absence of a right to opt to charge VAT (the purchaser not having a VAT identification number at the time of conclusion of the transaction), although at the time of conclusion of the transaction the purchaser of the immovable property had applied for registration as a VAT payer, and was registered as a VAT payer one month after the conclusion of the transaction, consistent with the provisions of the Directive governing the supplier's right to deduct VAT and adjustment of the deduction and with the principle of neutrality of VAT? In such a case is it important to determine whether the purchaser of the immovable property who registered as a VAT payer after the transaction really used the acquired property in activities subject to VAT and there is no evidence of fraud or abuse?

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