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Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 17 August 2021 — Aquila Part Prod Com S.A. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-512/21)

(2021/C 471/33)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Aquila Part Prod Com S.A.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1.

Is a practice of a tax authority pursuant to which that authority, automatically and without carrying out any checks, concludes from the fact that a natural person has acted knowingly, where that natural person has a legal relationship with a legal person which acts as a broker, is independent of the taxable person, which is the principal, and has its own legal personality, but that natural person does not have a relationship with the taxable person, that the taxable person has also acted knowingly, thereby ignoring the provisions of the contract concluded between the principal and the broker and also the provisions of foreign law governing the brokerage relationship, compatible with EU law, in particular Articles 9(1) and 10 of the VAT Directive, (1) and with the principle of fiscal neutrality?

2.

Are Articles 167, 168(a) and 178(a) of the VAT Directive to be interpreted as meaning that, where a tax authority identifies the existence of a circular invoicing chain, that fact alone suffices as objective evidence of tax fraud or in such a case is the tax authority also required to indicate which member(s) of the chain committed the tax fraud and what their modus operandi was?

3.

Are Articles 167, 168(a) and 178(a) of the VAT Directive, in the light of the principles of

proportionality and reasonableness, to be interpreted as meaning that even if the tax authority considers, based on the specific circumstances of the case, that the taxable person should have been more diligent, that person cannot be required to verify facts which the tax authority was only able to discover after an inspection lasting approximately five years which necessitated numerous additional checks using instruments of public law, such that the protection of taxable persons' trade secrets was not an impediment to the checks? In the event that greater diligence is required, is it sufficient proof of due diligence that the taxable person's scrutiny extends to matters beyond those indicated in the Mahagében judgment in relation to possible trading partners, such that the taxable person has internal supply rules for the purpose of conducting checks on those trading partners, does not accept cash payments, includes clauses concerning the possible risks in the contracts it concludes, and also examines other matters during the transaction?

4.

Are Articles 167, 168(a) and 178(a) of the VAT Directive to be interpreted as meaning that, if the tax authority finds that the taxable person actively participated in the tax fraud, it is sufficient in that regard that the evidence discovered by the tax authority shows that, using due diligence, the taxable person could have become aware of the fact that it was participating in a tax fraud, without that evidence showing that the taxable person knew that it was participating in a tax fraud because of its active conduct in that fraud? If active participation in a tax fraud, in other words, awareness of that participation, is proven, is the tax authority required to establish the fraudulent actions of the taxable person materialising in its concerted conduct with the members preceding it in the chain or is it sufficient for the tax authority to rely on objective evidence that the members of the chain knew one another?

5.

Is a practice of a tax authority pursuant to which that authority bases its ruling on an alleged infringement of provisions governing the safety of the food supply chain which have no bearing on compliance by the taxable person with his tax obligations or on the circulation of his invoices, which the tax legislation does not provide for in any way in relation to the taxable person and which have no effect on the actual facts of the transactions inspected by the tax authority and on the taxable person's awareness examined in the tax proceedings, compatible with Articles 167, 168(a) and 178(a) of the VAT Directive, with the right to a fair trial recognised as a general principle in Article 47 of the Charter of Fundamental Rights of the European Union, and with the principle of legal certainty?

In the event the previous question is answered in the affirmative:

6.

Is a practice of a tax authority whereby that authority, without the involvement of the official body responsible for the safety of the food supply chain, which has material and territorial competence, sets out in its ruling findings concerning the taxable person which come within that official body's sphere of competence, such that, based on infringements identified in relation to the safety of the food supply chain — a matter outside its sphere of competence — it draws tax consequences for the taxable person, without that person being able to dispute the finding that he infringed the provisions on food supply chain safety in proceedings which are separate from the tax proceedings and which respect the fundamental guarantees and the parties' rights, compatible with Articles 167, 168(a) and 178(a) of the VAT Directive, with the right to a fair trial recognised as a general principle in Article 47 of the Charter, and with the principle of legal certainty?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added

tax (OJ 2006 L 347, p. 1).