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Request for a preliminary ruling from the Curtea de Apel Cluj (Romania) lodged on 24 August 2021 — ASA v DGRFP Cluj

(Case C-519/21)

(2021/C 513/24)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Appellant: ASA

Respondent: DGRFP Cluj

Parties joined as guarantors: BP, MB

Questions referred

1.

Can VAT Directive 2006/[1]12 (1) in general, and Articles 9, 12, 14, 62, 63, 65, 73 and 78 in particular, be interpreted, in a specific context such as that of the dispute in the main proceedings, as meaning [that]:

—

as regards the occurrence of the chargeable event in the case of taxable transactions involving the supply of immovable property and the method for determining the relevant taxable amount, natural persons who are parties to a contract relating to an association without legal personality [concluded] with the taxable person liable for tax on output transactions which he should have collected, also have the status of taxable person since the association contract was not registered with the tax authorities before the activity commenced but was presented to them before the administrative acts relating to taxation were issued?

2.

Can VAT Directive 2006/112 in general, and Articles 167, 168(a), 178(a) and 179 in particular, and the principles of proportionality and neutrality, be interpreted, in a specific context such as that of

the dispute in the main proceedings, as:

(a)

recognising the possibility of conferring the right of deduction on a taxable person, where he does not owe tax or has not paid personally the input VAT on goods and services used in connection with the taxable transactions, and the VAT is due/paid at the preceding stage by natural persons in respect of whom the status of taxable person has not been established, but who are parties to a contract relating to an association without legal personality [concluded] with the taxable person liable for tax on output transactions which he should have collected, since the association contract was not registered with the tax authorities before the activity commenced?

(b)

recognising the possibility of conferring the right of deduction on a taxable person, in a specific context such as that of the dispute in the main proceedings, where he does not owe tax or has not paid personally the input VAT on goods and services used in connection with the taxable transactions, and the VAT is due/paid at the preceding stage by a natural person in respect of whom the status of taxable person has been established, who is party to a contract relating to an association without legal personality and who, together with the taxable person, intends also to exercise, or could exercise, his own right of deduction, and the latter are liable for tax on output transactions which they should have collected, since the association contract was not registered with the tax authorities before the activity commenced?

3.

In the event that the answer to the questions is in the negative and/or in the light of the principle of legal certainty:

is a claim by the taxable person, who is liable for VAT and related charges, admissible against natural persons in respect of whom the status of taxable person has not been established and who are parties to a contract relating to an association without legal personality [concluded] with the taxable person liable for tax on output transactions which he should have collected, since the association contract was not registered with the tax authorities before the activity commenced, in order to obtain the proportion [of tax] which was laid down for the distribution of profits accruing to those persons under the association contract in relation to the liability for VAT and related charges imposed on the taxable person?

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