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Request for a preliminary ruling from the Tribunal Judicial da Comarca do Porto — Juízo Central Cível da Póvoa de Varzim (Portugal) lodged on 9 November 2021 — Gencoal S.A. v Conceito Norte — Consultadoria de Gestão, Lda., BT

(Case C-669/21)

(2022/C 64/24)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca do Porto — Juízo Central Cível da Póvoa de Varzim

Parties to the main proceedings

Applicant: Gencoal S.A.

Defendant: Conceito Norte — Consultadoria de Gestão, Lda., BT

Question referred for a preliminary ruling

The question which is referred in connection with the examination of this dispute is whether Article 31(1) and (4) of Royal Decree 1624/1992 of 29 December 1992 approving the Spanish VAT Regulations and Article 15(1) of Directive 2008/9/EC (1) of 12 February 2008, by providing, in the case of the former, that the period for the filing of an application for a VAT refund by traders or professional practitioners not established in the territory of application of the tax but established within the Community [European Union] starts to run [on the day] following the last day of each calendar quarter or each calendar year and ends on 30 September of the year following the calendar year in which the tax concerned was paid, and, in the case of the latter, that the refund application must be submitted to the Member State of establishment not later than 30 September of the calendar year following the refund period, infringe the principle of fiscal neutrality (with consequences for neutrality in the context of competition and the principle of equal treatment from the point of view of the prohibition of discrimination) which flows from the common system of VAT as derived from recitals 4, 5 and 7 and Articles 167, 170, 171 and 178 of Council Directive 2006/112/EC (2) of 28 November 2006, as amended by Council Directive 2008/8/EC (3) of 12 February 2008, and the fundamental right enshrined in Article 41(1) of the Charter of Fundamental Rights of the European Union.

(1) Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23).

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

(3) Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services (OJ 2008 L 44, p. 11).