

Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

17 May 2023(*)

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Margin scheme – Article 311 – Concept of ‘second-hand goods’ – End-of-life vehicles sold for parts)

In Case C-365/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, Belgium), made by decision of 16 May 2022, received at the Court on 7 June 2022, in the proceedings

IT

v

État belge,

THE COURT (Eighth Chamber),

composed of M. Safjan (Rapporteur), President of the Chamber, N. Jääskinen and M. Gavalec, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Belgian Government, by P. Cottin, J.-C. Halleux and C. Pochet, acting as Agents,
- the European Commission, by F. Clotuche-Duvieusart and J. Jokubauskaitė, 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 Article 311(1)(1) 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 IT and État belge (Belgian State) concerning the refusal of the Belgian tax authorities to apply the margin scheme in respect of certain vehicle sales made by IT.

Legal context

European Union law

3 Article 311(1) of the VAT Directive provides:

‘For the purposes of this Chapter, and without prejudice to other Community provisions, the following definitions shall apply:

(1) “second-hand goods” means movable tangible property that is suitable for further use as it is or after repair, other than works of art, collectors’ items or antiques and other than precious metals or precious stones as defined by the Member States;

...

(5) “taxable dealer” means any taxable person who, in the course of his economic activity and with a view to resale, purchases, or applies for the purposes of his business, or imports, second-hand goods, works of art, collectors’ items or antiques, whether that taxable person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale;

...’

4 Under Article 313(1) of the VAT Directive:

‘In respect of the supply of second-hand goods, works of art, collectors’ items or antiques carried out by taxable dealers, Member States shall apply a special scheme for taxing the profit margin made by the taxable dealer, in accordance with the provisions of this Subsection.’

5 Article 314 of the VAT Directive is worded as follows:

‘The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors’ items or antiques where those goods have been supplied to him within the Community by one of the following persons:

(a) a non-taxable person;

(b) another taxable person, in so far as the supply of goods by that other taxable person is exempt pursuant to Article 136;

(c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;

(d) another taxable dealer, in so far as [value added tax (VAT)] has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme.’

6 Article 315 of the VAT Directive provides:

‘The taxable amount in respect of the supply of goods as referred to in Article 314 shall be the

profit margin made by the taxable dealer, less the amount of VAT relating to the profit margin.

The profit margin of the taxable dealer shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.'

Belgian law

7 Article 58(4) of the code de la taxe sur la valeur ajoutée (Value Added Tax Code) and Article 1 of arrêté royal no 53, du 23 décembre 1994, relatif au régime particulier d'imposition de la marge bénéficiaire applicable aux biens d'occasion, objets d'art, de collection ou d'antiquité (Royal Decree No 53 of 23 December 1994 on the special scheme for taxing the profit margin applicable to second-hand goods, works of art, collectors' items or antiques) transposes Articles 311 and 313 of the VAT Directive into Belgian law.

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

8 Since 1 October 2013, IT has been registered for VAT purposes in respect of a business activity consisting in selling second-hand vehicles and wrecks. In the context of that activity, it purchases, among other things, scrapped (written-off) vehicles from insurance companies and resells them to third parties as wrecks or 'for parts'.

9 In 2015, IT underwent an inspection which resulted in a statement of adjustment on account of infringements of the rules on VAT deduction and of the margin scheme. On the basis of national provisions transposing Articles 311 and 313 of the VAT Directive, the tax authorities decided to exclude invoices referring to 'cars sold for parts' or invoices relating to wrecks from the margin scheme.

10 IT brought an action against that decision maintaining, inter alia, by reference to the judgment of the Court of 18 January 2017, *Sjelle Autogenbrug* (C-471/15, EU:C:2017:20), that vehicles sold 'for parts' were 'second-hand goods', within the meaning of Article 311(1)(1) of the VAT Directive.

11 The cour d'appel de Liège (Court of Appeal, Liège, Belgium) dismissed IT's claims in a judgment of 1 March 2019. That court noted that the judgment of 18 January 2017, *Sjelle Autogenbrug* (C-471/15, EU:C:2017:20) did not concern, as in the present case, vehicles resold 'for parts' without those parts being tailored for individual needs, but parts removed by the taxable dealer from end-of-life vehicles and resold as such by that taxable person. Next, that court held that it was necessary to ascertain whether the vehicles in question in the main proceedings had maintained the functionalities they possessed when new so that they could be reused as they are or after repair and that they could, therefore, be classified as 'second-hand goods', within the meaning of Article 311(1)(1) of the VAT Directive.

12 That court considered, first, that that was clearly not the case in respect of vehicles sold 'for parts' by IT, as the words 'for parts' objectively show that those vehicles were, in principle, no longer suitable for further use as such and that it is the objective circumstances in which the resale transaction took place that must be taken into account. Secondly, it found, as regards the vehicles reduced to wrecks, that they could also not be classified as 'second-hand goods' as they could not be put to further use having maintained the characteristics they possessed when new and their use could be limited only to the recovery of certain parts and materials from which they are made.

13 IT having brought an appeal against the appeal judgment before the Cour de cassation (Court of Cassation, Belgium), the referring court, that court asks whether the appellate court's interpretation of Article 311(1)(1) of the VAT Directive is correct.

14 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 311(1)(1) of the [VAT] Directive to be interpreted as meaning that end-of-life motor vehicles purchased from persons referred to in Article 314 of the directive by an undertaking selling second-hand vehicles and wrecks, which are intended to be sold "for parts" without the parts having been removed from them, constitute second-hand goods within the meaning of that provision?'

Consideration of the question referred

15 By its question, the referring court asks, in essence, whether Article 311(1)(1) of the VAT Directive must be interpreted as meaning that definitively end-of-life motor vehicles that are acquired by an undertaking from the persons referred to in Article 314 of the VAT Directive and which are intended to be sold 'for parts' without the parts having been removed from them, constitute second-hand goods within the meaning of the first of those provisions.

16 As a preliminary point, it should be noted that it is apparent both from the statement of facts and the question referred for preliminary ruling that the vehicles acquired by IT are scrapped (written-off) vehicles and that they are therefore definitively end-of-life. In those circumstances and as is also apparent from the decision to refer, those vehicles may be resold only as wrecks or for subsequent use of their component parts ('resale for parts') and not in order to be reused as such or for repair, it being specified that the question referred by the national court relates only to the scenario of resale for parts.

17 In the light of that preliminary consideration, it should be recalled that, under Article 311(1)(1) of the VAT Directive, 'movable tangible property that is suitable for further use as it is or after repair' constitutes 'second-hand goods'.

18 The Court has held that the concept of 'second-hand goods', includes movable tangible property that is suitable for further use as it is or after repair, coming from other property in which it was incorporated as a component, and that, in order to be characterised as 'second-hand goods', it is only necessary that the used property has maintained the functionalities it possessed when new and that it may, therefore, be reused as it is or after repair (see, *inter alia*, judgment of 18 January 2017, *Sjelle Autogenbrug*, C-471/15, EU:C:2017:20, paragraphs 31 and 32).

19 Furthermore, the Court has also held that the application of the margin scheme does not necessarily entail that the property purchased is the same as the property sold. In particular, the Court confirmed that that scheme applied to the resale of parts removed by the taxable person from an end-of-life motor vehicle acquired by the taxable person, in so far as a motor vehicle is composed of a set of parts which have been assembled and may be removed and resold, as they are or after repair (see, *inter alia*, judgment of 18 January 2017, *Sjelle Autogenbrug*, C-471/15, EU:C:2017:20, paragraphs 36 and 37).

20 Admittedly, unlike the case which gave rise to the abovementioned judgment, the case in the main proceedings is characterised by the fact that the taxable dealer did not remove the parts from a definitively end-of-life vehicle which that dealer itself had acquired for resale, but resold the vehicle as such 'for parts', that is to say with a view to the subsequent use of the parts of that

vehicle as spare parts.

21 However, as the European Commission noted in essence in its written observations, that difference cannot lead to the conclusion that the Court's reasoning in the judgment of 18 January 2017, *Sjelle Autogenbrug* (C?471/15, EU:C:2017:20) cannot be applied to a situation such as that at issue in the main proceedings.

22 It is important to take into account the fact, noted in paragraph 16 of the present judgment, that the vehicles acquired by a taxable dealer, such as IT, are definitively end-of-life and cannot therefore be resold in order to be reused as they are or repaired. Since the vehicle itself, as movable tangible property, is not by definition suitable for further use, as it is or after repair, within the meaning of Article 311(1)(1) of the VAT Directive, it is necessary, in order to determine whether that vehicle may be regarded as a second-hand good and therefore as benefiting from the margin scheme, to focus on only the parts of that vehicle which, in the context of a resale by the taxable dealer to other persons, are suitable for such further use.

23 An interpretation allowing a definitively end-of-life vehicle, as a second-hand good, to fall within the margin scheme because some of its components are suitable for further use is in accordance with the objective of that scheme which seeks, as is apparent from recital 51 of the VAT Directive, to avoid in particular double taxation which can result, first, from the sale price of those components already taking into account VAT paid at the time of the vehicle's purchase by a person falling within Article 314 of that directive and, secondly, neither that person nor the taxable dealer being able to deduct that amount (see, to that effect, judgment of 18 January 2017, *Sjelle Autogenbrug*, C?471/15, EU:C:2017:20, paragraphs 39 and 40 and the case-law cited).

24 In this case, for the purposes of ascertaining whether vehicles resold by IT fall within the margin scheme, the referring court will have to ensure that, in accordance with the case-law referred to in paragraph 18 of the present judgment, those vehicles still include components that retain the functionalities that they had when new so they can be reused as they are or after repair.

25 The referring court will also have to ascertain that those vehicles have not in fact been sold simply in order to be scrapped or transformed into another object. A vehicle whose components, retaining the functionalities that they possessed when new, are not removed by the purchaser in order to be reused as such or after repair is no longer in the same economic cycle and therefore does not qualify for the special margin scheme (see, to that effect, judgment of 11 July 2018, *E LATs*, C?154/17, EU:C:2018:560, paragraph 34).

26 In the context of ascertaining whether those vehicles have been sold simply in order to be scrapped or transformed into another object, the referring court must take into account all the objective circumstances in which the resale has taken place. As is clear from the Court's case-law, the terms contained in the VAT Directive are objective in nature and apply without regard to the purpose or results of the transactions concerned (judgment of 11 July 2018, *E LATs*, C?154/17, EU:C:2018:560, paragraph 35 and the case-law cited).

27 Although taking into consideration the intention of a taxable person participating in the transaction is, save in exceptional cases, contrary to the objectives of the common system of VAT, the referring court could, on the other hand, take into account objective factors such as the presentation and state of the vehicles, the subject matter of the contract, the price for which those vehicles were sold, the method of charging or the economic activity of the person who acquired those vehicles (see, to that effect, judgment of 11 July 2018, *E LATs*, C?154/17, EU:C:2018:560, paragraphs 36 and 37 and the case-law cited).

28 In the light of the foregoing, the answer to the question referred is that Article 311(1)(1) of

the VAT Directive must be interpreted as meaning that definitively end-of-life motor vehicles acquired by an undertaking from the persons referred to in Article 314 of that directive and intended to be sold 'for parts' without the parts having been removed are second-hand goods within the meaning of Article 311(1)(1) of that directive where, first, they still include parts which maintain the functionalities that they possessed when new so that they can be reused as such or after repair and, secondly, it is established that those vehicles remained in the same economic cycle because of that reuse of parts.

Costs

29 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 (Eighth Chamber) hereby rules:

Article 311(1)(1) of Council Directive No 2006/112/EC of 28 November 2006 on the common system of value added tax,

must be interpreted as meaning that definitively end-of-life motor vehicles acquired by an undertaking from the persons referred to in Article 314 of that directive and intended to be sold 'for parts' without the parts having been removed are second-hand goods within the meaning of Article 311(1)(1) of that directive where, first, they still include parts which maintain the functionalities that they possessed when new so that they can be reused as such or after repair and, secondly, it is established that those vehicles remained in the same economic cycle because of that reuse of parts.

[Signatures]

* Language of the case: French.