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Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 22 February 2022 — Balgarska telekomunikatsionna kompania EAD v Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ Sofia

(Case C-127/22)

(2022/C 191/24)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant: Balgarska telekomunikatsionna kompania EAD

Respondent: Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ Sofia

Questions referred

1.

Is Article 185(1) of Directive 2006/112/EC (1) to be interpreted as meaning that, where goods are written off, in the sense that assets or inventories are derecognised on the taxable person’s statement of financial position because they are not expected to be of any further economic benefit, for example because they are worn, faulty or unsuitable or cannot be used for their intended purpose, that is a change in the factors used to determine the amount to be deducted in relation to the VAT already paid when the goods were purchased, which occurred after the VAT return was made in accordance with the Zakon za danak varhu dobavenata stoinost (Law on value added tax, ‘the ZDDS’) and which therefore gives rise to the obligation to adjust the deduction if the goods written off were subsequently sold as goods listed in Annex 2 and hence as a taxable supply?

2.

Is Article 185(1) of Directive 2006/112/EC to be interpreted as meaning that, where goods are written off, in the sense that assets or inventories are derecognised on the taxable person’s statement of financial position because they are not expected to be of any further economic benefit, for example because they are worn, faulty or unsuitable or cannot be used for their intended purpose, that is a change in the factors used to determine the amount to be deducted in

relation to the VAT already paid when the goods were purchased, which occurred after the VAT return was made in accordance with the ZDDS and which therefore gives rise to the obligation to adjust the deduction if the goods written off were subsequently destroyed or disposed of and that fact can be duly proved or confirmed?

3.

If the answer to Question 1 or Question 2 or both is in the affirmative, is Article 185(2) of Directive 2006/112/EC to be interpreted as meaning that, where goods are written off under the circumstances described above, that is a duly proved or confirmed case of the destruction or loss of goods, for which the obligation arises to adjust the deduction in relation to the VAT paid when the goods were acquired?

4.

If the answer to Question 1 or Question 2 or both is in the affirmative, is Article 185(2) of Directive 2006/112/EC to be interpreted as meaning that, where goods are written off under the circumstances described above, that is a duly proved or confirmed case of the destruction or loss of goods, for which the obligation arises to adjust the deduction in relation to the VAT paid when the goods were acquired?

5.

If the answer to Question 1 or Question 2 or both is in the negative, does Article 185(1) of Directive 2006/112/EC preclude national legislation, such as Article 79(3) of the ZDDS in the version applicable up to 31 December 2016, or Article 79(1) of the ZDDS in the version applicable from 1 January 2017, which requires the deduction to be adjusted where goods are written off, even where the goods are subsequently sold as a taxable supply of goods within the meaning of Annex 2 or where they are destroyed or disposed of and that fact is duly proved or confirmed?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1, Special edition in Bulgarian: Chapter 9, Volume 3, p. 7).