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Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 25 May 2022 — Feudi di San Gregorio Aziende Agricole SpA v Agenzia delle Entrate

(Case C-341/22)

(2022/C 303/22)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Feudi di San Gregorio Aziende Agricole SpA

Respondent: Agenzia delle Entrate

Questions referred

1.

Is Article 9(1) of Directive 2006/112 (1) to be interpreted as meaning that the status of taxable person, and consequently the right to deduct input VAT paid or to be reimbursed input VAT paid, may be refused where, in three consecutive years, the relevant transactions for VAT purposes carried out are of a value which is not deemed commensurate — in that it is too low — with what may, according to criteria pre-determined by law, reasonably be expected from the available assets and the person or entity concerned is unable to demonstrate, as justification for that fact, the existence of objective circumstances which have caused that result?

2.

In the event that the first question is answered in the negative, do Article 167 of Directive 2006/112, the general principle of VAT neutrality and the general principle that any restriction of the right to deduct VAT must be proportional preclude a provision of national law such as Article 30(4) of Law No 724 of 1994, under which the right to deduct input VAT paid on purchases or to be reimbursed such VAT or to use such VAT in a subsequent tax period may be refused where, in three consecutive tax periods, the relevant transactions for VAT purposes carried out are of a value which is not deemed commensurate — in that it is too low — with what may, according to criteria pre-determined by law, reasonably be expected from the available assets for three consecutive years and the taxable person concerned is unable to demonstrate, as justification for

that fact, the existence of objective circumstances which have caused that result?

3.

In the event that the second question is answered in the negative, do the EU-law principles of legal certainty and of the protection of legitimate expectations preclude a provision of national law such as Article 30(4) of Law No 724 of 1994, under which the right to deduct input VAT paid on purchases or to be reimbursed such VAT or to use such VAT in a subsequent tax period may be refused where, in three consecutive tax periods, the relevant transactions for VAT purposes carried out are of a value which is not deemed commensurate — in that it is too low — with what may, according to criteria pre-determined by law, reasonably be expected from the available assets for three consecutive years and the taxable person concerned is unable to demonstrate, as justification for that fact, the existence of objective circumstances which have caused that result?

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