OPINION OF ADVOCATE GENERAL

BOT

delivered on 17 February 2016 (1)

Case C?518/14

Senatex GmbH

v

Finanzamt Hannover-Nord

(Request for a preliminary ruling from the Niedersächsisches Finanzgericht (Finance Court of Lower Saxony, Germany))

(Reference for a preliminary ruling — Taxation — Value added tax — Deduction of input tax — Issue of invoices without a tax number or without a VAT identification number — Legislation of a Member State precluding ex tunc correction of an invoice)

1. The legal framework of the present case is Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. (2) In particular, the questions raised concern, first, the effect which should be given to the correction of an incorrect or incomplete invoice in respect of the time when the right to deduct value added tax (VAT) may be exercised and, second, whether such correction may be limited in time.

2. In this Opinion I will explain why I think that the VAT directive must be interpreted as precluding national legislation such as that at issue in the main proceedings under which the correction of an invoice in relation to required details, namely the VAT identification number, does not have retroactive effect, with the result that the right to deduct VAT may be exercised only for the year when the initial invoice was corrected and not for the year when that invoice was drawn up.

3. In this regard, I will explain why I think that the Member States may adopt measures to penalise failure to provide the required details, as long as they comply with the principle of proportionality, and measures placing a temporal restriction on the possibility of correcting an incorrect or incomplete invoice, provided they apply in the same way to similar rights in tax matters based on domestic law and to such rights based on EU law (principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of the right of deduction (principle of effectiveness).

I – **Legal framework**

A – *EU law*

4. Article 63 of the VAT directive states:

‘The chargeable event shall occur and VAT shall become chargeable when the goods or the services are supplied’.

5. Under Article 167 of that directive:

‘A right of deduction shall arise at the time the deductible tax becomes chargeable’.

6. Article 168(a) of the directive reads as follow:

‘In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person’.

7. Article 178(a) of the VAT directive provides:

‘In order to exercise the right of deduction, a taxable person must meet the following conditions:

(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240’.

8. Under Article 179 of the directive:

‘The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178.

However, Member States may require that taxable persons who carry out occasional transactions, as defined in Article 12, exercise their right of deduction only at the time of supply.’

9. Under Article 219 of the directive:

‘Any document or message that amends and refers specifically and unambiguously to the initial invoice shall be treated as an invoice’.

10. Article 226 of the VAT directive reads as follows:

‘Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

...

(3) the VAT identification number referred to in Article 214 under which the taxable person supplied the goods or services;

...’

11. Article 239 of the directive is worded as follows:

‘In cases where Member States make use of the option under point (b) of the first subparagraph of Article 272(1) of not allocating a VAT identification number to taxable persons who do not carry out any of the transactions referred to in Articles 20, 21, 22, 33, 36, 138 and 141, and where the supplier or the customer has not been allocated an identification number of that type, another number called the tax reference number, as defined by the Member States concerned, shall be entered on the invoice instead’.

B – *German law*

12. Paragraph 15(1), first sentence, (1) of the 2005 Law on turnover tax (Umsatzsteuergesetz 2005), (3) in its version applicable to the main proceedings (UStG), provides that a trader may deduct as input tax the tax lawfully due in respect of supplies of goods or services effected by another trader for the purposes of his business. That provision also states that the exercise of the right of deduction requires that the trader holds an invoice drawn up in accordance with Paragraphs 14 and 14a of the UStG. Such an invoice must, inter alia, contain all the details listed in Paragraph 14(4) of the UStG.

13. Input tax may be deducted only in the tax period in which all the substantive requirements for the exercise of that right under Paragraph 15(1) of the UStG are met.

14. Under Paragraph 31(5) of the Turnover Tax Implementing Regulation (Umsatzsteuer-Durchführungsverordnung), in its version applicable to the main proceedings, an invoice may be corrected if it does not contain all the details required by Paragraphs 14(4) and 14a of the UStG or if details contained therein are inaccurate. To that end, it is sufficient to communicate the missing or corrected details by a document which refers specifically and unambiguously to the invoice. Such correction is subject to the same formal and substantive requirements as are laid down in Paragraph 14 of the UStG.

15. In specific cases of inaccurate or wrongful VAT details, Paragraph 17(1) of the UStG applies by analogy. Under that provision, the correction of an invoice does not have retroactive effect, but takes effect for the period in which the corrected invoice is communicated to the customer or in which the request for correction is granted after any potential detriment to tax revenue has been ruled out.

16. The referring court also explains that if the deduction is refused because parts of the invoice are missing or incorrect, the right of deduction can be obtained at the time of correction by correcting the invoice. In that case, the VAT receipts obtained by the tax authorities remain the same. However, this may result in an increased tax liability for the trader. If the deduction is refused only a number of years later, for example in connection with an on-the-spot inspection, interest for late payment under Paragraph 233a of the Tax Code (Abgabenordnung), as it applies in the period at issue in the main proceedings, gives rise to significant financial burdens.

II – **The facts in the main proceedings**

17. Senatex GmbH (‘Senatex’) carries on a wholesale textile business. For the years 2008-2011 it showed in its tax returns an input tax deduction on the basis of commission statements issued by it to its sales representatives and on the basis of invoices from a commercial designer (together ‘the invoices at issue’).

18. Between 11 February and 17 May 2013, Senatex was subject to an inspection by the Finanzamt Hannover-Nord (Hannover-Nord Tax Office) in relation to the years 2008-2011. In the course of the inspection, it was found that the invoices at issue submitted for the purposes of input

tax deduction were not proper invoices within the meaning of Paragraphs 15(1) and 14(4) of the UStG. Neither the invoices themselves nor the annexed documents contained the tax number or the VAT identification number of the sales representatives concerned or commercial designer.

19. On 2 May 2013, during the inspection period, Senatex corrected the commission statements, for the years 2009-2011 only, by adding the details of the tax number or the VAT identification number of each sales representative concerned. The invoices of the commercial designer were similarly rectified for the years 2009-2011.

20. Notwithstanding those corrections, on 2 July 2013 the Finanzamt Hannover-Nord issued amended notices of tax assessment for the years 2008-2011 in which it stated that the input tax deductions in respect of the invoices at issue could not be made for the years 2009-2011 on the ground that the requirements for those deductions were met only when the corrections were made, namely in 2013, and not in the years 2009-2011.

21. Senatex therefore lodged an objection against those amended notices of tax assessment. In addition, during those objection proceedings, it discovered that it had not issued corrections for the invoices at issue for 2008. On 11 February 2014, it accordingly corrected the commission statements for 2008 by adding the details of the tax number or the VAT identification number of the sales representatives concerned. The invoices of the commercial designer were similarly rectified for the year 2008.

22. By decision of 3 March 2014, the Finanzamt Hannover-Nord maintained its view that the requirements for input tax deductions in respect of the invoices at issue were not met until those invoices had been corrected in 2013 and 2014. In its view, it is not possible for the correction of an invoice to be given retroactive effect to the time the supply was made, thus conferring an *ex tunc* effect.

23. On 5 March 2014, Senatex brought an action against that decision at the referring court. It takes the view that the corrections made to the invoices have retroactive effect, namely for the years 2008-2011, as those corrections were made before the final administrative decision, namely the decision of 3 March 2014. It thus claims that the referring court should annul the amended notices of tax assessment issued by the Finanzamt Hannover-Nord for the years 2008-2011.

III – **The questions referred for a preliminary ruling**

24. As the Niedersächsisches Finanzgericht (Finance Court of Lower Saxony) has doubts as to the interpretation of the Court's judgments and of the provisions of the VAT directive, it decided to stay its proceedings and to refer the following questions for a preliminary ruling:

'1. Is the *ex nunc* effect of the first issue of an invoice, as established by the Court of Justice in the judgment in *Terra Baubedarf-Handel* (C?152/02, EU:C:2004:268), qualified by the judgments of the Court of Justice in *Pannon Gép Centrum* (C?368/09, EU:C:2010:441) and *Petroma Transports and Others* (C?271/12, EU:C:2013:297) as regards cases, such as the present, in which an incomplete invoice is completed, so that the Court of Justice ultimately intended to permit retrospective effect in such cases?

2. What are the minimum requirements for an invoice to be capable of correction with retrospective effect? Is it necessary that the original invoice bears a tax number or a VAT identification number, or can these be added later with the consequence that the right of deduction is retained on the basis of the original invoice?

3. Is a correction to an invoice timely if it is only made in the course of objection proceedings

against the decision (amendment notice) of the tax authority?’

IV – **My analysis**

25. By its first and second questions, the referring court is actually seeking to ascertain whether Articles 167, 178(a), 179 and 226(3) of the VAT directive must be interpreted as precluding national legislation such as that at issue in the main proceedings under which the correction of an invoice in relation to certain required details, namely the VAT identification number, does not have retroactive effect, with the result that the right to deduct VAT may be exercised only for the year when the initial invoice was corrected and not for the year when that invoice was drawn up.

26. By its third question, the referring court asks whether the VAT directive must be interpreted as precluding national legislation or practice under which a taxable person is refused the right to deduct VAT where the correction of an invoice in relation to required details is made after the adoption of a decision refusing VAT deduction on the ground that those details had initially been omitted.

27. The first and second questions raise issues regarding the consequences of the correction of an invoice for the time when the right of deduction may be exercised. Under the German legislation, the correction of the invoice gives rise to the exercise of the right to deduct VAT only for the year when the initial invoice was corrected, and not for the year when that invoice was drawn up.

28. According to the German Government, under the provisions of the VAT directive, the right of deduction may be exercised only where two conditions are met at the same time. First, the right of deduction must arise in accordance with Article 167 of that directive and, second, the taxable person must meet the conditions laid down in Article 178 of the directive, which include holding an invoice drawn up in accordance with Articles 220 to 236 and 238 to 240 of the directive. When an invoice is corrected, those two conditions are met only when that correction is made and not when the initial invoice was drawn up. It follows that the right of deduction may not be exercised until the correction is made.

29. I do not share that view for the following reasons.

30. According to settled case-law, the right of deduction is a fundamental principle of the common system of VAT, which in principle may not be limited, and which is exercisable immediately in respect of all the taxes charged on transactions relating to inputs. (4) The right of deduction is therefore immediate and comprehensive. Furthermore, as the Court regularly points out, the deduction system is intended to relieve the trader entirely of the burden of the VAT due or paid in the course of all his economic activities. The common system of VAT therefore ensures that all economic activities, whatever their purpose or results, provided that they are, in principle, themselves subject to VAT, are taxed in a neutral way. (5)

31. Under Article 167 of the VAT directive, a right of deduction arises at the time the deductible tax becomes chargeable. The material conditions which must be met in order for that right to arise are set out in Article 168(a) of that directive. Thus, in order to be able to avail of that right, first, the interested party must be a taxable person within the meaning of that directive, second, the goods or services relied on to give entitlement to the right of deduction must be used by the taxable person for the purposes of his own taxed output transactions, and, as inputs, those goods or services must be supplied by another taxable person. (6)

32. The rules governing exercise of the right of deduction are set out in Article 178 of the VAT directive. In particular, the taxable person must hold an invoice drawn up in accordance with

Article 226 of that directive, (7) which must include the VAT identification number. (8)

33. These conditions which must be fulfilled by the taxable person in order to exercise his right of deduction have been described as ‘formal conditions’ by the Court. (9) They do not constitute conditions to be fulfilled in order for the right to deduct VAT to arise, but they do allow the tax authorities to have all the information necessary to collect VAT and to exercise their supervision in order to prevent evasion. (10)

34. Where, in an inspection by the tax authorities for example, they find errors or omissions in the drawing up of the invoice, the taxable person has the possibility of correcting that invoice with a view to exercising his right of deduction. That possibility is provided for in Article 219 of the VAT directive, which states that ‘[a]ny document or message that amends and refers specifically and unambiguously to the initial invoice shall be treated as an invoice’. The Court has also ruled that that directive does not prohibit the correction of incorrect invoices. (11)

35. With that in mind, it is necessary to ascertain the temporal effects of the correction of an invoice on the right to deduct VAT.

36. In this regard, the referring court mentions the judgments in *Terra Baubedarf-Handel* (C?152/02, EU:C:2004:268), *Pannon Gép Centrum* (C?368/09, EU:C:2010:441) and *Petroma Transports and Others* (C?271/12, EU:C:2013:297). As far as the latter two judgments are concerned, whilst they do concern the correction of an invoice with a view to the exercise of the right of deduction, the question of the temporal effect of such correction on the exercise of the right of deduction was not addressed.

37. Thus, in the judgment in *Pannon Gép Centrum* (C?368/09, EU:C:2010:441), the question was whether the provisions of the VAT directive should be interpreted as precluding national legislation or practice whereby the right to deduct VAT was denied where the invoice relating to goods or services supplied to the taxable person had initially contained an error and the subsequent correction of that error did not comply with all the conditions set by the applicable national rules. (12) The Court therefore had to rule on whether the correction of an invoice with a view to the exercise of the right of deduction was possible and whether the Member States were able to impose conditions in addition to the material and formal conditions laid down by the VAT directive, in that case the sequential numbering of the corrected invoice. (13) In its judgment in *Petroma Transports and Others* (C?271/12, EU:C:2013:297), the Court noted that the common system of VAT does not prohibit the correction of incorrect invoices but ruled that, with regard to the dispute in the main proceedings in that case, the information necessary to complete and regularise the invoices had been submitted after the tax authority had adopted its decision to refuse the right to deduct VAT, with the result that, before that decision was adopted, the invoices provided to that authority had not yet been rectified to enable it to ensure the correct collection of the VAT and to permit supervision thereof. (14) It must therefore be stated that the judgments in *Pannon Gép Centrum* (C?368/09, EU:C:2010:441) and *Petroma Transports and Others* (C?271/12, EU:C:2013:297) do not adopt a position on whether or not the correction of an invoice has retroactive effect on the exercise of the right of deduction.

38. With regard to reliance on the case-law based on the judgment in *Terra Baubedarf-Handel* (C?152/02, EU:C:2004:268) in support of the argument made by the German Government, it seems to me that this must be rejected. In that judgment the Court stated that the right to deduct VAT must be exercised in respect of the tax period in which the two conditions required under the first subparagraph of Article 18(2) of Sixth Directive 77/388/EEC (15) are satisfied. (16) In other words, added the Court, the goods must have been delivered or the services performed and the taxable person must be in possession of the invoice. (17) In the case at issue, Terra Baubedarf-Handel GmbH did not possess an invoice when it exercised its right to deduct VAT for services

which had been supplied to it in the course of its business. It had not therefore been able to make payment and had not paid that VAT in the deduction period. In that case the VAT could not be regarded as being chargeable on a given transaction. (18) For that reason, the Court ruled that it is necessary for the two conditions required by the first subparagraph of Article 18(2) of Sixth Directive 77/388 to be met in order to respect the principle that the right of deduction must be exercised immediately in respect of all the taxes charged on transactions relating to inputs.

39. That case giving rise to the judgment in *Terra Baubedarf-Handel* (C?152/02, EU:C:2004:268) therefore differs from the present case in so far as Senatex, unlike Terra Baubedarf-Handel GmbH, possessed invoices when it exercised its right of deduction and had paid input VAT. That tax was thus charged on a transaction relating to inputs in the course of Senatex's economic activity. In my view, that judgment cannot therefore be relied on in the present case in claiming that the Court prohibited the retroactive effect of the right to deduct VAT following the correction of an invoice.

40. On the other hand, it seems to me that the judgment in *Terra Baubedarf-Handel* (C?152/02, EU:C:2004:268) supports the opposite view. In paragraph 35 of that judgment, the Court reiterates the settled case-law according to which the right to deduct VAT must be exercised immediately in respect of all the taxes charged on transactions relating to inputs. The first paragraph of Article 179 of the VAT directive thus provides that '[t]he taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178'.

41. The immediate character of the deduction is intended, inter alia, to ensure the neutrality of the common system of VAT and to avoid any financial risk for taxable persons by bearing the burden of the VAT in whole or in part. (19) That is why, under Article 179 of the VAT directive, the period in which the goods acquired or the service supplied were taxed, giving rise to the right of deduction, must coincide with the period in which the right of deduction is exercised. That principle is merely tempered in that directive such that Member States may require that taxable persons who carry out occasional transactions, as defined in Article 12 thereof, exercise their right of deduction only at the time of supply, (20) which is not the case here.

42. If the correction of an invoice were considered to give rise to the exercise of the right of deduction only for the period in which that correction was made and not for the period in which the invoice was drawn up and paid, as in the main proceedings, that would run counter to the principle that that right is immediate. In addition, it would entail a significant financial risk for the taxable person in so far as, since the tax authorities consider that it could not exercise its right to deduct input VAT before the invoice is corrected, it could be liable for payment of interest for late payment, as is provided for, moreover, in the Tax Code, even though no fiscal loss is incurred by the Member State, as the VAT revenue ultimately remains the same. (21)

43. That said, I do not dispute the importance of the invoice in the common system of VAT. It is a form of proof which permits the collection and deduction of VAT. Thus, a trader who invoices the sale of goods or the supply of a service issues an invoice with VAT and collects that VAT on behalf of the State. Similarly, that invoice will enable a taxable person who has paid VAT to provide proof of this and thus to deduct the VAT. More specifically, the VAT identification number allows the tax authorities to levy VAT more easily, by identifying the taxable person concerned, and to verify that the transactions actually occurred, in order to prevent evasion.

44. However, as the Court has ruled on several occasions, the principle of VAT neutrality requires deduction of input tax to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements. (22) This case-law

is all the more relevant in this case in so far as the failure to state the VAT identification number was rectified by the taxable person, who corrected the invoices, thereby also complying with the formal requirements laid down by EU law.

45. In this regard, although the Member States are required to verify declarations by taxable persons and to check all relevant documents in order to calculate the amount of tax or to verify that the transactions actually occurred, there is nothing to prevent them laying down penalties for failure to comply with those formal requirements. The penalty thus imposed would act as a deterrent, seeking to ensure the effectiveness of the obligation to enter on the invoice the details required by the VAT directive, encouraging the taxable person to be more diligent in future and allowing consideration to be given to the administrative expenses arising from the omission and necessary to correct that invoice. (23) However, Member States are required to exercise that power having due regard to EU law, in particular the principle of proportionality.

46. At the hearing, the German Government stated that carrying forward the right of deduction and imposing interest for late payment on the defaulting taxable person, as in the main proceedings, replaced a penalty. However, in my view, that penalty does not comply with the principle of proportionality. The required details on the invoice, which include the VAT identification number, are intended to enable the tax authorities to ensure the correct collection of the VAT and to permit supervision in order to prevent evasion. As stated at the hearing, I cannot see how, in such a case, the tax authorities can differentiate between a taxable person acting in good faith and a fraudster. Moreover, it is easier for a fraudster to enter a false VAT identification number, counting on the fact that his return will slip through the net, than not to include it at all, which would, in contrast, attract the attention of the tax authorities and give them cause for an inspection. If we imagine a taxable person acting in good faith whose invoice submitted in his return did not contain a VAT identification number, he would, in all likelihood, expose himself to an inspection by the tax authorities and could find himself in the same situation as Senatex, that is to say, having his right of deduction carried forward and having interest for late payment imposed, with significant financial consequences. Such an approach would seem to lack legal certainty and to be incapable of combating evasion effectively. Furthermore, it could lead to a taxable person acting in good faith and a fraudster being penalised in the same way.

47. In order to prevent abuse, Member States may, in my view, also adopt measures placing a temporal restriction on the possibility of submitting corrected invoices. This leads us to the referring court’s third question, by which it asks the Court if the VAT directive must be interpreted as precluding national legislation or practice under which a taxable person is refused the right to deduct VAT where the correction of an invoice in relation to required details is made after the adoption of a decision refusing VAT deduction on the ground that those details had initially been omitted.

48. The VAT directive does not provide for the introduction of measures specifying a deadline, placing a temporal restriction on the correction of incorrect or incomplete invoices. Consequently, I consider that it is for the Member States to adopt such measures in their national law. They must ensure that the measures introduced comply with the principles of equivalence and effectiveness.

49. In the case at hand, prohibiting any correction after a decision by the tax authorities refusing the exercise of right of deduction may seem excessive, thus rendering impossible in practice or excessively difficult the exercise of that right.

50. In some cases, it may be only at the stage of an amended notice of tax assessment — aside from cases of fraud — that the taxable person becomes aware of an omission or an error in relation to required details on the invoice. Prohibiting any correction after a decision, such as an amended notice of tax assessment, could simply lead to a refusal of any correction of an incorrect

or incomplete invoice. This would have the severe consequence of depriving the taxable person of his right of deduction, a fundamental right which makes it possible to ensure the principle of fiscal neutrality, especially since the error or omission may originate from the person who draws up the invoice, namely the seller of goods or the supplier of services.

51. In my view, therefore, the judgment in *Petroma Transports and Others* (C?271/12, EU:C:2013:297) must be qualified to a large extent in this regard. (24)

52. In the light of all the above considerations, I consider that Articles 167, 178(a), 179 and 226(3) of the VAT directive must be interpreted as precluding national legislation such as that at issue in the main proceedings under which the correction of an invoice in relation to certain required details, namely the VAT identification number, does not have retroactive effect, with the result that the right to deduct VAT may be exercised only for the year when the initial invoice was corrected and not for the year when that invoice was drawn up. In this regard, the Member States may adopt measures to penalise failure to provide the required details, as long as they comply with the principle of proportionality, and also measures placing a temporal restriction on the possibility of correcting an incorrect or incomplete invoice, provided they apply in the same way to similar rights in tax matters based on domestic law and to such rights based on EU law (principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of the right of deduction (principle of effectiveness).

V – **Conclusion**

53. In the light of the above considerations, I propose that the Court answer the questions referred by the Niedersächsisches Finanzgericht as follows:

Articles 167, 178(a), 179 and 226(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation such as that at issue in the main proceedings under which the correction of an invoice in relation to certain required details, namely the VAT identification number, does not have retroactive effect, with the result that the right to deduct VAT may be exercised only for the year when the initial invoice was corrected and not for the year when that invoice was drawn up.

In this regard, the Member States may adopt measures to penalise failure to provide the required details, as long as they comply with the principle of proportionality, and also measures placing a temporal restriction on the possibility of correcting an incorrect or incomplete invoice, provided they apply in the same way to similar rights in tax matters based on domestic law and to such rights based on EU law (principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of the right of deduction (principle of effectiveness).

1 – Original language: French.

2 – OJ 2006 L 347, p. 1, ‘the VAT directive’.

3 – BGBl. 2005 I p. 386.

4 – See judgment in *PPUH Stehcemp* (C?277/14, EU:C:2015:719, paragraph 26 and the case-law cited).

5 – See judgment in *PPUH Stehcemp* (C?277/14, EU:C:2015:719, paragraph 27 and the case-law cited).

6 – See judgment in *PPUH Stehcemp* (C?277/14, EU:C:2015:719, paragraph 28 and the case-law cited).

7 – See Article 178(a) of that directive.

8 – See Article 226(3) of the VAT directive.

9 – See judgments in *Collée* (C?146/05, EU:C:2007:549, paragraph 25); *Polski Trawertyn* (C?280/10, EU:C:2012:107, paragraph 41), and PPUH *Stehcemp* (C?277/14, EU:C:2015:719, paragraph 29).

10 – See, with regard to other obligations which Member States may impose to ensure the correct collection of VAT and to prevent evasion, judgments in *Nidera Handelscompagnie* (C?385/09, EU:C:2010:627, paragraphs 49 and 50) and *VSTR* (C?587/10, EU:C:2012:592, paragraphs 44 and 45).

11 – Judgments in *Pannon Gép Centrum* (C?368/09, EU:C:2010:441, paragraphs 43 to 45) and *Petroma Transports and Others* (C?271/12, EU:C:2013:297, paragraph 34).

12 – See paragraph 36 of that judgment.

13 – See paragraphs 42 to 45 of that judgment.

14 – See paragraphs 21, 34 and 35 of that judgment.

15 – Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

16 – That provision was replaced by the first paragraph of Article 179 of the VAT directive.

17 – Judgment in *Terra Baubedarf-Handel* (C?152/02, EU:C:2004:268, paragraph 34).

18 – Judgment in *Terra Baubedarf-Handel* (C?152/02, EU:C:2004:268, paragraph 35).

19 – With regard to carrying forward the VAT excess to the following tax period, see judgment in *Commission* v *Hungary* (C?274/10, EU:C:2011:530, paragraph 45 and cited case-law).

20 – See the second paragraph of Article 179 of the VAT directive.

21 – See paragraph 5 of the decision referring the case.

22 – See judgments in *Nidera Handelscompagnie* (C?385/09, EU:C:2010:627, paragraphs 50 and 51) and *Polski Trawertyn* (C?280/10, EU:C:2012:107, paragraph 43). See also, with regard to the obligation to declare when a taxable activity is to commence, judgment in *Dankowski* (C?438/09, EU:C:2010:818, paragraphs 33 to 36) and, with regard to irregularities in accounts and tax returns affecting transactions subject to the reverse charge procedure, judgment in *Ecotrade* (C?95/07 and C?96/07, EU:C:2008:267, paragraph 63).

23 – It should be noted in this regard that several Member States provide for such fines (see Article 70 of the Belgian Code de la TVA, Article 77 of the Luxembourg Loi concernant la taxe sur la valeur ajoutée or Article 1737 of the French Code général des impôts).

24 – In that judgment the Court stated that ‘[i]t should be noted that the common system of VAT

does not prohibit the correction of incorrect invoices. Accordingly, where all of the material conditions required in order to benefit from the right to deduct VAT are satisfied and, *before the tax authority concerned has made a decision*, the taxable person has submitted a corrected invoice to that tax authority, the benefit of that right cannot, in principle, be refused on the ground that the original invoice contained an error' (paragraph 34, my italics).