Provisional text

JUDGMENT OF THE COURT (Ninth Chamber)

4 October 2024 (*)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 168(a) – Right to deduct VAT – Acquisition of goods by a taxable person – Making available of those goods free of charge to a subcontractor for the purpose of carrying out works for the taxable person – Refusal of the deduction of the VAT relating to those goods)

In Case C-475/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), made by decision of 3 July 2023, received at the Court on 25 July 2023, in the proceedings

Voestalpine Giesserei Linz GmbH

v

Administraţia Judeţeană a Finanţelor Publice Cluj,

Direcţia Generală Regională a Finanţelor Publice Cluj-Napoca,

THE COURT (Ninth Chamber),

composed of O. Spineanu-Matei, President of the Chamber, J.-C. Bonichot and S. Rodin (Rapporteur), Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Voestalpine Giesserei Linz GmbH, by C. Dragoman, lawyer,

– the Romanian Government, by R. Antonie, E. Gane and L. Ghiţă, acting as Agents,

– the European Commission, by A. Armenia and M. Herold, 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 the provisions of Title X of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between Voestalpine Giesserei Linz GmbH ('VGL') and the Administrația Județeană a Finanțelor Publice Cluj (Office of Public Finance, Cluj, Romania) and the Direcția Generală Regională a Finanțelor Publice Cluj-Napoca (Regional Directorate-General of Public Finances, Cluj-Napoca, Romania) (together, 'the tax authority') concerning the refusal by that tax authority to allow the deduction of input value added tax ('VAT') paid upon VGL's acquisition of goods which were made available to a subcontractor free of charge for the purpose of carrying out works for VGL.

Legal context

European Union law

3 Title X of Directive 2006/112, entitled 'Deductions', contains five chapters. Chapter 1 of that title, entitled 'Origin and scope of right of deduction', includes, inter alia, Article 168 of that directive. Article 168 provides:

'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;

…'

4 Title XI of that directive, relating to, inter alia, the obligations of taxable persons, includes Chapter 4, entitled 'Accounting', which includes Article 242 of that directive, which provides:

'Every taxable person shall keep accounts in sufficient detail for VAT to be applied and its application checked by the tax authorities.'

Romanian law

5 Article 297(4)(a) of Legea nr. 227/2015, privind Codul fiscal (Law No 227/2015, establishing the Tax Code), of 8 September 2015 (*Monitorul Oficial al României*, Part I, No 688 of 10 September 2015) provides:

'All taxable persons have the right to deduct tax relating to purchases if they are used for the purposes of the following transactions: taxable transactions.'

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

6 VGL, a company established in Austria, produces various moulded parts in the course of its economic activity. It processes those parts in Romania, where it is registered for VAT purposes. To that end, it concluded a framework contract with Austrex Handels GmbH ('Austrex'), established in Austria, under which Austrex is able to use the services of a subcontractor, namely Global Energy Products SA ('GEP'), established in Romania.

7 Once the processing has been carried out, the moulded parts are sent and invoiced by VGL to customers in the European Union. It is apparent from the file before the Court that VGL states its Romanian VAT number when invoicing those parts.

8 In the course of its processing activity, VGL makes available to Austrex, pursuant to a right of use transferable to GEP, a building located in Cluj-Napoca (Romania), which VGL owns. VGL also makes available, free of charge, for the use of GEP, which processes the parts produced by VGL, a crane which VGL acquired and installed on the grounds of that building.

9 VGL was the subject of an advance tax inspection by the tax authority on account of the filing of a VAT return for June 2021 indicating a negative balance with the option of a refund. During that inspection, that tax authority found that, first, VGL had not drawn up accounting statements indicating the income and the expenditure incurred in the course of its activity in Romania and that, second, the building in which GEP carries on its activities had been made available to Austrex free of charge. In the light of those factors, that authority took the view that VGL had not adduced evidence that the acquisition of the crane had been made for the purposes of its economic activity and refused the deduction of the VAT relating to that acquisition.

10 VGL challenged the tax authority's tax assessment before the Tribunalul Cluj (Regional Court, Cluj, Romania), which dismissed the action, essentially on the same grounds as those put forward by the tax authority. That court added that the processing activity carried out in Romania generated income for VGL only indirectly, the direct beneficiaries of that activity being Austrex and GEP, since those two companies invoiced VGL for the work in respect of which the purchased crane was used.

11 VGL brought an appeal against the judgment of that court before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), which is the referring court.

12 The referring court is uncertain, first, as to the compatibility with the provisions of Title X of Directive 2006/112, relating to deductions, of a national practice that consists in denying a taxable person the right to deduct VAT where goods acquired by that taxable person are made available, free of charge, to a subcontractor in order for that subcontractor to carry out work for that taxable person, on the ground that the goods are considered as having been acquired, not for the purposes of that taxable person's taxed transactions, but for those of that subcontractor. Second, it asks whether the fact that VGL did not keep separate accounts for its permanent establishment in Romania is relevant in that regard.

13 In those circumstances, the Curtea de Apel Cluj (Court of Appeal, Cluj) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

(1) Do the provisions of [Directive 2006/112] on the right to deduct VAT preclude a national practice whereby, if a company purchases goods which it then makes available to a subcontractor free of charge so that the subcontractor may carry out activities for the first company, that company is refused the right to deduct the VAT on the goods purchased, on the grounds that [that] purchase is deemed not to be for the purposes of its own taxable transactions but for the purposes of the subcontractor's taxable transactions?

(2) Do the provisions of [Directive 2006/112] on the right to deduct VAT preclude a national practice whereby a taxable person is refused the right to make deductions on the grounds that he or she has not kept separate accounts for his or her permanent establishment in Romania, thus preventing the tax authorities from verifying the costs of the labour used for the cast products of which the owner is [that taxable person], let alone the entire processing activity carried out in Romanian territory?'

Consideration of the questions referred

The first question

14 By its first question, the referring court asks, in essence, whether Article 168(a) of Directive 2006/112 must be interpreted as precluding a national practice whereby, where a taxable person acquires goods which it then makes available, free of charge, to a subcontractor, in order for that subcontractor to carry out work for that taxable person, that taxable person is denied the deduction of the VAT relating to the acquisition of those goods, on the ground that those goods are regarded as having been acquired for the purposes of that subcontractor's taxable transactions, and not for the purposes of that taxable person's taxable transactions.

15 Article 168(a) of Directive 2006/112 provides that 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 it carries out those transactions, to deduct from the VAT which it is liable to pay

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

16 In that regard, it must be borne in mind that the right to deduct laid down by Article 168(a) of Directive 2006/112 is an integral part of the VAT scheme and in principle may not be limited. It is exercisable immediately in respect of all the taxes charged on input transactions (judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C-132/16, EU:C:2017:683, paragraph 25 and the case-law cited).

17 The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his or her economic activities. The common system of VAT consequently ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT (judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C-132/16, EU:C:2017:683, paragraph 26 and the case-law cited).

18 It follows from Article 168 of Directive 2006/112 that, in so far as the taxable person, acting as such at the time when it acquires goods, uses the goods for the purposes of its taxed transactions, it is entitled to deduct the VAT paid or payable in respect of the goods (judgment of 22 October 2015, *Sveda*, C-126/14, EU:C:2015:712, paragraph 18 and the case-law cited).

19 More specifically, it is apparent from Article 168 that, in order to enjoy a right of deduction, two conditions must be met. First, the person concerned must be a 'taxable person' within the meaning of the directive. Secondly, the goods or services relied on to confer entitlement to that right must be used by the taxable person for the purposes of its own taxed output transactions and, as inputs, those goods or services must be supplied by another taxable person (judgment of 7 March 2024, *Feudi di San Gregorio Aziende Agricole*, C-341/22, EU:C:2024:210, paragraph 28 and the case-law cited).

20 Regarding the first part of that second condition, which is the only condition at issue in the main proceedings, it should be borne in mind that, before the taxable person is entitled to deduct input VAT, the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to the right to deduct is, in principle, necessary. The right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them is a component of the price of the output transactions giving rise to the right to deduct (judgment of 7 March 2024, *Feudi di San Gregorio Aziende Agricole*, C-341/22, EU:C:2024:210, paragraph 29 and the case-law cited).

21 A taxable person also has a right to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct where the costs of the goods and services in question are part of that taxable person's general costs and are, as such, components of the price of the goods or services which that taxable person supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole (judgments of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C-132/16, EU:C:2017:683, paragraph 29 and the case-law cited, and of 7 March 2024, *Feudi di San Gregorio Aziende Agricole*, C-341/22, EU:C:2024:210, paragraph 30 and the case-law cited).

22 In that regard, it is apparent from the case-law of the Court that, in the context of the direct-link test that is to be applied by the tax authorities and the national courts, it is for the tax authorities and the national courts to take into consideration all the circumstances surrounding the transactions concerned and to take account only of the transactions that are objectively linked to the taxable person's taxable activity. The existence of such a link must thus be assessed in the light of the objective content of the transaction in question (judgment of 25 November 2021, *Amper Metal*, C-334/20, EU:C:2021:961, paragraph 34 and the case-law cited).

23 Accordingly, in the appraisal of the question as to whether, in circumstances such as those at issue in the main proceedings, VGL has the right to deduct input VAT paid for the acquisition of the crane which it made available free of charge to its contractual partner Austrex and the latter's subcontractor, GEP, it is necessary to determine whether there is a direct and immediate link between, on the one hand, the acquisition of those goods and, on the other hand, one or more taxed output transactions by VGL or, failing that, that company's economic activity as a whole.

24 It follows from the facts of the case in the main proceedings described in the order for reference that, without the crane acquired by VGL, the processing of moulded parts, weighing more than 10 tonnes, would not have been possible, with the result that its acquisition was essential for completing that processing and that, consequently, in the absence of such an acquisition, VGL would not have been able to carry on its economic activity consisting of selling moulded parts (see, by analogy, judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C-132/16, EU:C:2017:683, paragraph 33).

25 The fact that Austrex and its subcontractor GEP derive a direct benefit from the crane in question, because it is made available free of charge, cannot result in the denial of VGL's right to deduct VAT relating to its acquisition of the crane if a direct and immediate link is established between that acquisition and either one or more taxed output transaction carried out by VGL or its economic activity as a whole, which is for the referring court to determine (see, by analogy, judgments of 22 October 2015, *Sveda*, C-126/14, EU:C:2015:712, paragraph 34, and of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C-132/16, EU:C:2017:683, paragraphs 35 and 40).

26 It follows from the foregoing that, in accordance with the case-law referred to in paragraphs 20 and 21 above, in order to establish the existence of a right of deduction in the present case, it is necessary that the expenditure incurred, as inputs, in order to acquire the crane, is a component of the price of one or more taxable output transactions carried out by VGL or, failing that, in so far as they are expenses forming part of its general costs, a component of the price of the goods and services which it supplies in the course of its economic activity. It is for the referring court to determine those facts.

27 In that context, it must be stated that the possible influence of the fact that the acquisition costs of the crane were incurred by VGL on the price invoiced by GEP for the processing of VGL's products is irrelevant, since the fact that GEP benefited from the crane free of charge cannot, in itself, justify VGL's being denied the VAT deduction relating to those costs, as pointed out in paragraph 25 above.

28 That said, it should be added that it is for the referring court to examine whether the making available of the crane was limited to what was necessary to ensure the processing of the moulded parts on behalf of VGL or whether it went beyond what was necessary for that purpose (see, by analogy, judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C-132/16, EU:C:2017:683, paragraph 37).

29 In accordance with the case-law of the Court, if the making available of the crane is limited to what was necessary for that purpose, the right of deduction should be recognised for the entirety of the costs resulting from its acquisition. By contrast, if that making available of the crane went beyond what was necessary to ensure the processing of the moulded parts, the direct and immediate link between the acquisition of the crane, on the one hand, and the taxed output transactions carried out or, failing that, the economic activity of VGL, on the other hand, is in part broken, with the result that the right of deduction must be recognised only for the input VAT levied on the part of the costs incurred for the acquisition of the crane which was objectively necessary to allow VGL to carry out its taxed transactions or its economic activity (see, by analogy, judgments of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C-132/16, EU:C:2017:683, paragraphs 38 and 39, and of 16 September 2020, *Mitteldeutsche Hartstein-Industrie*, C-528/19, EU:C:2020:712, paragraph 38).

30 Having regard to the foregoing considerations, the answer to the first question is that Article 168(a) of Directive 2006/112 must be interpreted as precluding a national practice whereby, where a taxable person has acquired goods which that taxable person then makes available free of charge to a subcontractor, in order for that subcontractor to carry out work for that taxable person, that taxable person is denied the deduction of the VAT relating to the acquisition of those goods, in so far as the making available of those goods does not go beyond what is necessary to enable that taxable person to carry out one or more taxable output transactions or, failing that, to carry out its economic activity, and the cost of acquiring those goods is part of the cost components of either the transactions carried out by that taxable person or the goods or services which that taxable person supplies in the course of its economic activity.

The second question

31 By its second question, the referring court asks, in essence, whether Article 168(a) of Directive 2006/112 must be interpreted as precluding a national practice whereby a taxable person is denied the deduction of input VAT on the ground that that taxable person has not kept separate accounts for its fixed establishment in the Member State in which the tax inspection is carried out, as a result of which the tax authorities are unable to determine certain facts.

32 As has already been set out, in essence, in paragraphs 16 and 17 above, in principle, the right of deduction laid down in Title X of that directive, which is intended to ensure the complete neutrality of taxation of all economic activities, provided that those activities are themselves subject to VAT, may not be limited and is exercisable immediately in respect of all the taxes charged on input transactions.

33 According to settled case-law, the fundamental 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 (judgment of 7 March 2018, *Dobre*, C-159/17, EU:C:2018:161, paragraph 31 and the case-law cited).

34 It follows from the foregoing that, where the tax authority of a Member State has the information necessary to establish that the substantive requirements have been satisfied, it cannot, in relation to the right of the taxable person to deduct that tax, impose additional conditions which may have the effect of rendering that right ineffective for practical purposes (judgment of 9 July 2015, *Salomie and Oltean*, C-183/14, EU:C:2015:454, paragraph 59 and the case-law cited).

35 The case may be different if non-compliance with such formal requirements effectively prevents the production of conclusive evidence that the substantive requirements have been satisfied (judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 46 and the case-law cited).

36 In that regard, it must be stated that the substantive requirements for the right to deduct are those which govern the actual substance and scope of that right, such as those provided for in Chapter 1 of Title X of Directive 2006/112, entitled ‘Origin and scope of right of deduction’, whereas the formal requirements for that right regulate the rules governing its exercise and monitoring thereof and the smooth functioning of the VAT system, such as the obligations relating to accounts, invoicing and filing returns (judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 47 and the case-law cited).

37 Consequently, for the purposes of applying and monitoring VAT, Title XI of that directive lists certain obligations incumbent, inter alia, on taxable persons liable to that tax, in particular the keeping of accounts in sufficient detail, required by Article 242 of that directive (see, to that effect, judgment of 28 July 2016, *Astone*, C-332/15, EU:C:2016:614, paragraph 48).

38 It follows that a taxable person cannot be prevented from exercising its right of deduction on the ground that it did not keep sufficiently detailed accounts if the tax authority is in a position to carry out its review and to verify that the substantive requirements are satisfied. In the present case, although the taxable person does not keep separate accounts for its fixed establishment in Romania, the tax authority cannot deny that taxable person the ability to exercise its right to deduct input VAT paid if that authority is in a position to carry out any checks necessary to establish the existence and the extent of that right, which it is for the referring court to determine.

39 Furthermore, the Court has held that penalising the failure on the part of the taxable person to comply with its obligations relating to accounts and tax returns by a denial of the right of deduction clearly goes beyond what is necessary to attain the objective of ensuring the correct application of those obligations, since EU law does not prevent Member States from imposing, where necessary, a fine or a financial penalty proportionate to the seriousness of an infringement of the formal requirements linked to the right of deduction (see, to that effect, judgment of 7 March 2018, *Dobre*, C-159/17, EU:C:2018:161, paragraph 34 and the case-law cited).

40 Having regard to the foregoing considerations, the answer to the second question is that Article 168(a) of Directive 2006/112 must be interpreted as precluding a national practice whereby a taxable person is denied the deduction of input VAT on the ground that that taxable person has not kept separate accounts for its fixed establishment in the Member State in which the tax inspection is carried out where the tax

authorities are in a position to determine whether the substantive conditions of the right of deduction are satisfied.

Costs

41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Ninth Chamber) hereby rules:

1. **Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax**

   must be interpreted as precluding a national practice whereby, where a taxable person has acquired goods which that taxable person then makes available free of charge to a subcontractor, in order for that subcontractor to carry out work for that taxable person, that taxable person is denied the deduction of the VAT relating to the acquisition of those goods, in so far as the making available of those goods does not go beyond what is necessary to enable that taxable person to carry out one or more taxable output transactions or, failing that, to carry out its economic activity, and the cost of acquiring those goods is part of the cost components of either the transactions carried out by that taxable person or the goods or services which that taxable person supplies in the course of its economic activity.

2. **Article 168(a) of Directive 2006/112**

   must be interpreted as precluding a national practice whereby a taxable person is denied the deduction of input VAT on the ground that that taxable person has not kept separate accounts for its fixed establishment in the Member State in which the tax inspection is carried out where the tax authorities are in a position to determine whether the substantive conditions of the right of deduction are satisfied.

[Signatures]

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* Language of the case: Romanian.