Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

12 December 2024 (*)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 168 – Right to deduct VAT – Purchase of administrative services provided within the same group of companies – Refusal of the right of deduction)

In Case C-527/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Prahova (Regional Court, Prahova, Romania), made by decision of 30 December 2022, received at the Court on 16 August 2023, in the proceedings

Weatherford Atlas Gip SA

v

Agenţia Naţională de Administrare Fiscală – Direcţia Generală de Soluţionare a Contestaţiilor,

Agenţia Naţională de Administrare Fiscală – Direcţia Generală de Administrare a Marilor Contribuabili,

THE COURT (Sixth Chamber),

composed of T. von Danwitz (Rapporteur), Vice-President of the Court, acting as President of the Sixth Chamber, A. Kumin and I. Ziemele, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Weatherford Atlas Gip SA, by D.-D. Dascălu and A.M. Iordache, avocaţi,

– the Romanian Government, by R. Antonie, M. Chicu and E. Gane, acting as Agents,

– the European Commission, by M. Herold and E.A. Stamate, 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 Articles 2 and 168 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 Weatherford Atlas Gip SA, on the one hand, and the Agenția Națională de Administrare Fiscală – Direcția Generală de Soluționare a Contestațiilor (National Agency for Tax Administration – Directorate-General for the settlement of complaints, Romania) and the Agenția Națională de Administrare Fiscală – Direcția Generală de Administrare a Marilor Contribuabili (National Agency for Tax Administration – Directorate-General for large-scale taxpayers, Romania) (together, 'the tax authority'), on the other, concerning the refusal, by that authority, of the right to deduct input value added tax (VAT) paid in respect of the purchase of administrative services provided within the same group of companies.

Legal context

3 Pursuant to Article 2(1)(c) of the VAT Directive, the supply of services for consideration within the territory of a Member State by a taxable person acting as such is to be subject to VAT.

4 In accordance with Article 9(1) of that directive, 'taxable person' means any person who, independently, carries out in any place any economic activity, whatever the purpose or result of that activity.

5 Under Article 11 of that directive:

'After consulting the advisory committee on value added tax (hereafter, the "VAT Committee"), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

A Member State exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.'

6 Article 168 of that directive 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;

(b) the VAT due in respect of transactions treated as supplies of goods or services pursuant to Article 18(a) and Article 27;

(c) the VAT due in respect of intra-Community acquisitions of goods pursuant to Article 2(1)(b)(i);

(d) the VAT due on transactions treated as intra-Community acquisitions in accordance with Articles 21 and 22;

(e) the VAT due or paid in respect of the importation of goods into that Member State.'

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

7 Weatherford Atlas Gip is part of the Weatherford group of companies, which specialises in oil services.

8 On 6 June 2016, Weatherford Atlas Gip took over, through a merger by acquisition, Foserco SA, a Romanian company, including its rights and obligations. The business activity of Foserco consisted in supplying ancillary services for the extraction of oil and natural gas.

9 In 2015 and in 2016 Foserco had provided drilling services in Romania to two customers, OMV Petrom and Petrofarc. In order to provide those services, Foserco had purchased general administrative services from companies in the Weatherford group, such as, inter alia, IT services, human resources,

marketing, accounting and consultancy services. Those general administrative services were provided by entities established outside Romania and the reverse charge procedure was used to calculate the VAT on those services. Other companies in that group also received the same services.

10 Following that merger, the tax authority ordered, by decision of 20 November 2019, a new corporation tax and VAT inspection of Weatherford Atlas Gip for the period from 1 January 2014 to 30 June 2015. That inspection therefore also covered Foserco's obligations that were taken over by Weatherford Atlas Gip.

11 Following that inspection, the tax authority issued a tax assessment notice and a tax inspection report by which it refused the right to deduct the input VAT paid by Foserco in respect of the administrative services purchased, in the amount of 1 774 419 Romanian lei (RON) (approximately EUR 356 540), on the ground, first, that no act or document had been produced to demonstrate the link between the services purchased and the activity of the taxable person under inspection and, second, that (i) the nature of the services provided, (ii) the identity of the persons who provided those services, (iii) the period during which they were provided, and (iv) the need for those services for Foserco does not emerge from the documents produced.

12 Weatherford Atlas Gip lodged a complaint against that tax assessment notice and the tax inspection report. Since that complaint was rejected by the tax authority by decision of 22 April 2020, Weatherford Atlas Gip brought an action for annulment before the Tribunalul Prahova (Regional Court, Prahova, Romania), which is the referring court. In the context of the investigation relating to that action, the tax authority stated that the existence of the services purchased was not called into question, but that Weatherford Atlas Gip had not established the existence of a link between those services and its taxed transactions. According to that authority, it is not possible to establish such a link, since those services were provided to several companies in the Weatherford group and therefore benefited other members of that group or that group as such. Although the costs of those services were shared between those companies, that authority nevertheless maintains that they should not have been invoiced to Weatherford Atlas Gip because they were not required by Weatherford Atlas Gip.

13 In that regard, the referring court notes that that tax authority does not deny that the administrative services at issue were actually supplied and does not allege any tax evasion, but that that tax authority refuses to recognise the right of deduction, on the ground that there is no evidence of the need for the purchase of those services for the taxable person. The referring court asks, in that regard, whether, under the VAT Directive, the right to deduct input VAT paid may be refused on the basis of a subjective assessment by the tax authority, relating to the necessity and appropriateness of the purchase of such services, where it is established that the costs relating to those services are part of that taxable person's general costs, within the meaning of the case-law resulting from, in particular, the judgment of 8 February 2007, *Investrand* (C-435/05, EU:C:2007:87, paragraph 24).

14 In those circumstances the Tribunalul Prahova (Regional Court, Prahova) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 168 of [the VAT Directive], read in the light of the principle of fiscal neutrality, be interpreted as precluding, in circumstances such as those in the main proceedings, the tax authority from refusing a taxable person the right to deduct the [VAT] paid in respect of administrative services acquired, where it is established that all the costs recorded for the services purchased have been included in the taxable person's general costs and that the taxable person carries out only taxable transactions, that the supply of services is expressly confirmed by the tax authority and that the tax treatment applied is that of the reverse charge procedure (which precludes a loss to the Treasury)?

(2) For the purposes of interpreting the provisions of Articles 2 and 168 of [the VAT Directive], in circumstances such as those in the main proceedings, may the services of management and administration (namely assistance and consultancy in various fields, financial and legal advice) provided between intra-group companies for the benefit of different members of the group be regarded by each member in part as being used for the purposes of taxable transactions, that is to say, acquired for its own purposes?

(3) For the purposes of interpreting Article 2 of [the VAT Directive], where it is established that intra-group services are not supplied to a member of the group, may a company which is part of the group but is deemed not to have benefited from such services be regarded as a taxable person acting as such?'

Consideration of the questions referred

The first and second questions

15 By those questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 168 of the VAT Directive must be interpreted as precluding national legislation or a national practice under which the tax authority refuses the right to deduct input VAT, paid by a taxable person when purchasing services from other taxable persons belonging to the same group of companies, on the grounds that those services were provided at the same time to other companies in that group and that their purchase was not necessary or appropriate.

Admissibility

16 The Romanian government submits that those questions are inadmissible on the ground that the first is based on an unsubstantiated factual premiss and is, in that regard, hypothetical, and that the second is, for its part, based on a statement of fact which does not make it possible to understand the reason which led the referring court to make a reference to the Court for a preliminary ruling.

17 In accordance with settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraph 22 and the case-law cited).

18 In the present case, as regards the first question, it is not for the Court to establish whether the premiss on which that question is based is factually accurate and, in any event, that question does not appear to be manifestly hypothetical, having regard to the subject matter of the dispute in the main proceedings, as described by the referring court. The admissibility of that question cannot therefore be called into question.

19 As regards the second question, it must be stated that the account of the legislative and factual context of the dispute in the main proceedings makes it possible to understand the reason which led the referring court to refer questions to the Court for a preliminary ruling, and that that account contains the factual and legal material necessary to give a useful answer to that question. In those circumstances, the admissibility of that question cannot be disputed either.

20 Consequently, the first and second questions are admissible.

Substance

21 According to settled case-law, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT. The right of deduction provided for in Article 167 et seq. of the VAT Directive is therefore an integral part of the VAT scheme and may not, in principle, be limited. That right is exercisable immediately in respect of all the VAT charged on input transactions. The deduction system is intended to relieve the taxable person entirely of the burden of the VAT due or paid in the course of all its economic activities (judgment of 7 March 2024, *Feudi di San Gregorio Aziende Agricole*, C-341/22, EU:C:2024:210, paragraph 27 and the case-law cited).

22 Thus, the common system of VAT ensures complete neutrality of taxation of all economic activities, whatever the purpose or results of those activities, provided that they are themselves subject in principle to VAT. In so far as the taxable person, acting as such at the time when it acquires goods or receives services, uses those goods or services for the purposes of its taxed transactions, it is entitled to deduct the VAT due or paid in respect of those goods or services (judgment of 7 March 2024, *Feudi di San Gregorio Aziende Agricole*, C-341/22, EU:C:2024:210, paragraph 27 and the case-law cited).

23 The exercise of the right of deduction presupposes the existence of an input transaction which is itself subject to VAT. In that regard, it must be recalled that a supply of services is carried out for consideration, within the meaning of the VAT Directive, and is therefore subject to that tax, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the actual consideration for an identifiable service supplied to the recipient. That is the case if there is a direct link between the service supplied and the consideration received (judgment of 20 January 2022, *Apcoa Parking Danmark*, C-90/20, EU:C:2022:37, paragraph 27 and the case-law cited).

24 In the present case, it is therefore for the referring court to ascertain, in the first place, that the purchases of administrative services at issue in the main proceedings are transactions subject to VAT, within the meaning of the case-law cited in the preceding paragraph of the present judgment. To that end, the referring court will have to ascertain whether there is a direct link between those services and the consideration paid by Foserco.

25 In addition, it is apparent from Article 168 of the VAT Directive that, in order for the right to deduct input VAT paid to be available, first, the person concerned must be a ‘taxable person’ within the meaning of that directive and, secondly, the goods or services relied on as the basis for claiming the right of deduction must be used by the taxable person for the purposes of its own taxed output transactions, and that, as inputs, those goods or services must be supplied by another taxable person (see, to that effect, judgments of 11 January 2024, *Global Ink Trade*, C-537/22, EU:C:2024:6, paragraph 33, and of 7 March 2024, *Feudi di San Gregorio Aziende Agricole*, C-341/22, EU:C:2024:210, paragraph 28 and the case-law cited).

26 In the present case, it is therefore for the referring court to ascertain, in the second place, that Foserco and the companies which provided the administrative services at issue in the main proceedings are taxable persons, within the meaning of the VAT Directive, and whether those services were used by Foserco for the purposes of its own taxed output transactions.

27 In that regard, it should be stated that the group of companies at issue in the main proceedings appears to be made up of separate taxable persons, and that it does not appear to constitute a single taxable person, namely a VAT group, under Article 11 of the VAT Directive. It is apparent from the request for a preliminary ruling, and from the written observations of Weatherford Atlas Gip, that the administrative services at issue in the main proceedings were provided to Foserco, which was a Romanian company, by companies established outside Romania. However, a VAT group is necessarily limited to the territory of one and the same Member State, as is apparent from the wording of that Article 11 (see, to that effect, judgment of 11 March 2021, *Danske Bank*, C-812/19, EU:C:2021:196, paragraph 24).

28 In that context, the Court has held that 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 13 June 2024, *C (Court-appointed administrators and liquidators)*, C-696/22, EU:C:2024:499, paragraph 86 and the case-law cited).

29 However, 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 its general costs and are, as such, components of the price of the goods or services which it supplies. Such costs do have a direct and immediate link with the taxable person’s economic activity as a whole (judgment of 4 October 2024, *Voestalpine Giesserei Linz*, C-475/23, EU:C:2024:866, paragraph 21 and the case-law cited).

30 The Court has further specified that the existence of such a link between transactions must be assessed in the light of the objective content of those transactions. More specifically, 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. Thus, account must be taken of the actual use of the goods and services purchased, as inputs, by the taxable person and of the exclusive reason for that purchase, since that reason must be regarded as a criterion for determining the objective content (see, to that effect, judgments of 13 June 2024, *C (Court-appointed administrators and liquidators)*, C-696/22, EU:C:2024:499, paragraph 89, and of 4 October 2024, *Voestalpine Giesserei Linz*, C-475/23, EU:C:2024:866, paragraph 22 and the case-law cited).

31 In that context, it is clear from the case-law that no right of deduction can arise from the part of the expenditure incurred by the taxable person that is linked not to transactions carried out by the taxable person itself, but to transactions carried out by a third party (see, to that effect, judgments of 1 October 2020, *Vos Aannemingen*, C-405/19, EU:C:2020:785, paragraph 38, and of 8 September 2022, *Finanzamt R (Deduction of VAT linked to a shareholder contribution)*, C-98/21, EU:C:2022:645, paragraph 55).

32 In the present case, if it turned out that part of the services in respect of which the expenditure at issue in the main proceedings was incurred had been used not for the purposes of the taxable person's own transactions but for the purposes of transactions by third parties, the existence of a direct and immediate link between those services and that taxable person's taxed transactions would be partially broken, so that that taxable person would not be entitled to proceed to deduct the VAT charged on that part of the expenditure (see, to that effect, judgment of 1 October 2020, *Vos Aannemingen*, C-405/19, EU:C:2020:785, paragraph 39 and the case-law cited).

33 In order to establish the scope of the taxable person's right to deduct, it is for the referring court to determine, in particular in the light of the contracts for the provision of services and the economic and commercial reality, the extent to which the services concerned were actually supplied in order to allow the taxable person to carry out its taxable transactions. It is only to that extent that the input VAT paid will be regarded as chargeable on the services supplied to the taxable person (see, to that effect, judgment of 1 October 2020, *Vos Aannemingen*, C-405/19, EU:C:2020:785, paragraphs 40 and 42 and the case-law cited).

34 The fact that the administrative services at issue in the main proceedings are provided simultaneously to several recipients appears to be irrelevant in that regard. By contrast, it is for the referring court to satisfy itself that the proportion of the costs relating to those services, borne by the taxable person, actually corresponds to the services which it received for the purposes of its own taxed output transactions.

35 The question whether the purchase of the administrative services at issue in the main proceedings was necessary or appropriate also seems irrelevant, since the VAT Directive does not make the exercise of the right of deduction subject to a criterion of the economic profitability of the input transaction. The common system of VAT is intended to ensure neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT. Therefore, the right to deduct, once it has arisen, is retained even if the intended economic activity was not carried out and, therefore, did not give rise to taxed transactions or if the taxable person was unable to use the goods or services which gave rise to a deduction in the context of taxable transactions by reason of circumstances beyond its control (see, to that effect, judgment of 13 June 2024, *C (Court-appointed administrators and liquidators)*, C-696/22, EU:C:2024:499, paragraph 94 and the case-law cited).

36 As regards, lastly, the burden of proof, it is settled case-law that it is for the taxable person seeking deduction of VAT to establish that it meets the conditions for eligibility. The tax authorities may thus require the taxable person to produce the evidence they consider necessary for determining whether or not the deduction requested should be granted (see, to that effect, judgments of 9 December 2021, *Kemwater ProChemie*, C-154/20, EU:C:2021:989, paragraph 33 and the case-law cited, and of 16 February 2023, *DGRFP Cluj*, C-519/21, EU:C:2023:106, paragraphs 99 and 100).

37 As regards the assessment of that evidence, it must be done by the national court in accordance with the rules of evidence under national law, carrying out an overall assessment of all the facts and circumstances of the case (see, to that effect, judgments of 25 May 2023, *Dyrektor Izby Administracji Skarbowej w Warszawie (VAT – Fictitious acquisition)*, C-114/22, EU:C:2023:430, paragraph 36, and of 11 January 2024, *Global Ink Trade*, C-537/22, EU:C:2024:6, paragraph 34).

38 Consequently, Article 168 of the VAT Directive must be interpreted as precluding national legislation or a national practice under which the tax authority refuses the right to deduct input VAT paid by a taxable person when acquiring services from other taxable persons belonging to the same group of companies on the grounds that those services were supplied at the same time to other companies in that group and that their purchase was not necessary or appropriate, where it is established that those services are used by that taxable person for the purposes of its own taxed output transactions.

The third question

39 By that question, the referring court asks whether, for the purpose of interpreting Article 2 of the VAT Directive, where it is established that intra-group services are not supplied to a member of the group, a company which is part of that group but is deemed not to have benefited from such services, may be regarded as a taxable person acting as such.

40 As the European Commission has pointed out, that question appears to be irrelevant for the purpose of resolving the dispute in the main proceedings. It does not appear to be in any way disputed, in the context of that dispute, that Foserco was a taxable person within the meaning of the VAT Directive. As the Romanian Government has also pointed out, that is a separate question from that of the existence of the right to deduct input VAT paid on the administrative services at issue in the main proceedings.

41 Consequently, in the light of the settled case-law recalled in paragraph 17 above, the third question is inadmissible.

Costs

42 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 (Sixth Chamber) hereby rules:

Article 168 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 or a national practice under which the tax authority refuses the right to deduct input value added tax paid by a taxable person when acquiring services from other taxable persons belonging to the same group of companies on the grounds that those services were supplied at the same time to other companies in that group and that their purchase was not necessary or appropriate, where it is established that those services are used by that taxable person for the purposes of its own taxed output transactions.

[Signatures]

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* Language of the case: Romanian.