Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 18 February 2016*

Case C-516/14

Barlis 06 — Investimentos Imobiliários e Turísticos SA
v
Autoridade Tributária e Aduaneira(Request for a preliminary ruling

from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Tax Arbitration Tribunal, Portugal))

(Tax law — Value added tax — Article 226(6) and (7) of Directive 2006/112/EC — Details in an invoice of the extent and nature of the service supplied and the date of supply — Article 178(a) of Directive 2006/112/EC — Exercise of the right of deduction — Requirement to hold an invoice which meets the requirements of Article 226 of Directive 2006/112/EC))

I – Introduction

1. Normally, receiving an invoice gives no reason for joy. It is somewhat different when it comes to value added tax (VAT). This is because, in this context, in certain circumstances an invoice entitles its recipient to recover from the tax authority the value added tax shown in the invoice (so-called right of deduction).

2. However, EU law on VAT also provides that the invoice must contain certain minimum information. The Portuguese tax authority did not accept this information as sufficient in a case which has given rise to the present request for a preliminary ruling. In particular, the description of the services being invoiced as 'legal services', without further details, was regarded as not fulfilling the requirements of VAT law as regards the mandatory contents of an invoice. Yet only a properly drawn up invoice conferred a right of deduction.

3. Against this background, the Court will have to clarify two matters. Not only will, in particular, the new question have to be answered as to how detailed the description of a service in an invoice must be. In addition, the Court will once again have to give its opinion on the consequences of a defective invoice for the right of deduction, to round off its previous case-law on this issue.

* Original language: German.

II – Legal framework

A – *EU law*

4. The levying of VAT in the European Union is governed by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax** ('the VAT Directive'). The predecessor to this directive was the Sixth Council Directive 77/388/EEC 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*** ('the Sixth Directive'). To the extent that the provisions of the two directives are the same, in the present case regard must be had to the Court's case-law on the Sixth Directive.

5. Article 168 of the VAT Directive**** lays down inter alia the following right of deduction:

'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;

…'

6. In the Chapter entitled 'Rules governing exercise of the right of deduction', Article 178 of the VAT Directive, which in the main proceedings is to be applied as originally enacted,***** supplements this:

'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;

…'

7. Article 226 of the VAT Directive, one of the provisions referred to, concerns the details in an invoice, and provides:

'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:

…

(6) the quantity and nature of the goods supplied or the extent and nature of the services rendered;

** OJ 2006 L 347, p. 1.

*** OJ 1977 L 145, p. 1.

**** This corresponds to Article 17(2)(a) of the Sixth Directive, as amended by Article 28f(1), as amended by Article 1(10) of Council Directive 95/7/EC of 10 April 1995 amending Directive 77/388/EEC and introducing new simplification measures with regard to value added tax — scope of certain exemptions and practical arrangements for implementing them (OJ 1995 L 102, p. 18).

***** In the meantime, Article 178(a) of the VAT Directive has been amended by Council Directive 2010/45/EU of 13 July 2010 amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing (OJ 2010 L 189, p. 1). In its original version, it corresponds to Article 18(1)(a) of the Sixth Directive, as amended by Article 28f(2), which was inserted by Article 1(22) of Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1).

(7) the date on which the supply of goods or services was made or completed or the date on which the payment on account referred to in points (4) and (5) of Article 220 was made, in so far as that date can be determined and differs from the date of issue of the invoice;

…'

8. Those provisions of Article 226 of the VAT Directive correspond in substance to the sixth and seventh indents of Article 22(3)(b) of the Sixth Directive, as amended by Article 28h,****** which was amended by Article 2001/115/EC.******* The legislative history of this predecessor provision in the Sixth Directive in particular is therefore to be taken into account in the present proceedings.

9. Recital 46 of the VAT Directive is the only one which concerns invoices, and it states:

'The use of electronic invoicing should allow tax authorities to carry out their monitoring activities. It is therefore appropriate, in order to ensure the internal market functions properly, to draw up a list, harmonised at Community level, of the particulars that must appear on invoices and to establish a number of common arrangements governing the use of electronic invoicing and the electronic storage of invoices, as well as for self-billing and the outsourcing of invoicing operations.'

B – *National law*

10. In Portuguese law, Article 36(5)(b) of the Código do Imposto sobre o Valor Acrescentado ('the CIVA') provides that invoices must contain 'the common name of the … services supplied, together with specification of the information necessary to determine the applicable tax rate'.

11. It is only if an invoice meets inter alia these requirements of Article 36(5)(b) of the CIVA that a right of deduction of the input tax stated in the invoice is conferred by Article 19(2)(a) and (6) of the CIVA.

12. In the proceedings before the Court, the Portuguese Government also submitted that in the period relevant to the dispute in the main proceedings Portuguese law provided for a reduced rate of tax on certain legal services, including services to pensioners and the unemployed and generally in relation to proceedings concerning civil status. These rules, which are not provided for in the provisions of the VAT Directive on the reduced rate of VAT which apply throughout the EU, are based on the protection for the status quo conferred by Article 113 of the VAT Directive.

III – The main proceedings

13. The applicant in the main proceedings, the company Barlis 06 — Investimentos Imobiliários e Turísticos SA, operates in the hotel sector.

14. From 2008 to 2010 it made use of the services of a firm of lawyers. For these the firm issued four invoices, which contained the following descriptions of the services:

— 'Legal services rendered from 1 December 2007 until the present date' (invoice dated 26 August 2008),

****** Article 28h of the Sixth Directive was inserted by Article 1(22) of Directive 91/680 (cited above, note 5).

******* Article 28h of the Sixth Directive was amended by Article 2 of Council Directive 2001/115/EC of 20 December 2001 amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax (OJ 2001 L 15, p. 24).

— ‘Fees for legal services rendered from June until the present date’ (invoice dated 17 December 2008),

— ‘Fees for legal services rendered until the present date’ (invoice dated 29 April 2009),

— ‘Fees for legal services rendered from 1 November 2009 until the present date’ (invoice dated 2 June 2010).

15. As regards the VAT shown in these invoices, the applicant in the main proceedings made a claim to the Portuguese tax authority to deduct input tax in the total amount of EUR 8689.49.

16. Following an inspection, the Portuguese tax authority refused the deduction, because the descriptions in the invoices of the services supplied did not meet the requirements of Article 36(5)(b) of the CIVA. The applicant in the main proceedings then produced supplementary documentation which contained a more detailed description of the services. The Portuguese tax authority nonetheless refused the deduction, on the ground that the invoices themselves still did not meet the legislative requirements.

IV – Proceedings before the Court

17. The Tribunal Arbitral Tributário (Tax Arbitration Tribunal, Portugal), before which the dispute is now pending, is of the view that in order to enable it to make a decision it is necessary to interpret the VAT Directive, and it therefore referred the following question to the Court on 17 November 2014 pursuant to Article 267 TFEU:

‘Must Article 226(6) of the VAT Directive be interpreted as permitting a description on an invoice which states ‘legal services rendered from such a date until the present date’ or merely ‘legal services rendered until the present date’ to be regarded as insufficient, where that body may, in accordance with the principle of collaboration, obtain the additional information which it deems necessary to confirm the existence and detailed characteristics of the relevant transactions?’

18. Before the Court, the applicant in the main proceedings, the Portuguese Republic and the European Commission made written observations on this question. At the oral hearing on 14 January 2016, the Federal Republic of Germany, the Portuguese Republic and the Commission made submissions.

V – Legal analysis

19. Against the background of the main proceedings, the referring tribunal******** ultimately seeks the answer to two separate questions.

20. First, it must be clarified whether invoices such as those in the present case meet the requirements of Article 226 of the VAT Directive as regards the contents of an invoice (see A, below). Secondly, it is necessary to determine the consequences for the right of deduction if the particulars in the invoices are found to be inadequate (see B, below).

******** According to the judgment in *Ascendi Beiras Litoral e Alta, Auto Estradas das Beiras Litoral e Alta* (C-377/13, EU:C:2014:1754, paragraphs 22 to 34), the Tribunal Arbitral Tributário is a court or tribunal within the meaning of Article 267 TFEU.

A – *Details in invoices*

21. Thus, there first arises the question as to whether invoices such as those in the main proceedings meet the requirements laid down by Article 226 of the VAT Directive as regards the contents of an invoice.

22. In the present case, the mandatory contents of an invoice are laid down in a binding and exhaustive manner by Article 226 of the VAT Directive. The provision is applicable to invoices which are required to be issued by Articles 220 and 221 of the VAT Directive. The invoices in the present case had to be issued under Article 220(1), because services were supplied to a taxable person. However, Portuguese law may not impose any more extensive requirements as regards the contents of an invoice beyond those in Article 226 of the VAT Directive. This is evident first from Article 226 itself, which provides that 'only' the details listed there are required in invoices, and secondly from the second paragraph of Article 273 of the VAT Directive, which provides that for collecting VAT the Member States may not impose additional invoicing obligations over and above those laid down in the VAT Directive.

23. As the Portuguese Government correctly submitted, in the present case it is not sufficient to interpret only Article 226(6) of the VAT Directive, on which the question referred is focussed. In order to give the referring tribunal a useful answer as regards the requirements of EU law********* in relation to the contents of an invoice, it is also necessary to bring Article 226(7) into the analysis.

24. According to these two provisions, invoices must contain details of both 'the extent and nature of the services rendered' (paragraph 6) and 'the date on which the supply of … services was made or completed' (paragraph 7).

1. Extent and nature of the services

25. As regards Article 226(6) of the VAT Directive, the question arises as to whether the descriptions used in the invoices in the present case, namely 'legal services rendered' in a specified time period or up to a specified date, sufficiently describe the 'nature' (see below, (a)) and the 'extent' (see below, (b)) of the services.

a) Nature of the services

26. To date, the Court has considered the requirements of Article 226(6) of the VAT Directive as regards the description of the 'nature' of services in only one case, which concerned a supply of goods. As with services, so with goods does Article 226(6) require their 'nature' to be stated. It follows from the case-law that on that basis there is no obligation to specify the ear tags on animals in the invoice,********** even though this would enable unambiguous identification of each individual thing supplied by reference to the details in the invoice.

27. From this it may be concluded, first, that the details in invoices required by Article 226(6) of the VAT Directive do not have to contain all the available information concerning the goods or services supplied. This is already clear from the wording of the provision, which refers only to the 'nature' of the goods or services, but does not require a precise description of the goods or services.

********* See, inter alia, judgments in *Viessmann* (C-280/91, EU:C:1993:103, paragraph 17); *Ville d'Ottignies-Louvain-la-Neuve and Others* (C-225/13, EU:C:2014:245, paragraph 30); and *Abcur* (C-544/13 and C-545/13, EU:C:2015:481, paragraph 33).

********** Judgment in *Evita-K* (C-78/12, EU:C:2013:486, paragraphs 52 and 53).

28. If, accordingly, not all the available information concerning the service which has been supplied needs to be included in an invoice, the question arises as to what level of detail is required for the 'nature' of a service to be sufficiently described. Applied to the present case, therefore, the issue is whether the whole of all legal services is in itself such a 'nature', or whether it is necessary to distinguish further between different types of legal services.

29. Neither the wording nor the scheme of Article 226(6) of the VAT Directive gives an answer to this question. Therefore, it must be answered by reference to the purpose of requiring these details in an invoice.

30. The purpose of requiring a specific detail in an invoice depends in turn on the function an invoice has to fulfil in the scheme of VAT. As follows from recital 46 of the VAT Directive, issuing invoices allows the tax authorities of the Member States to carry out their monitoring activities. In order to enable monitoring to take place, Article 244 of the VAT Directive requires taxable persons to keep all the invoices they have received and copies of all the invoices they have issued.

31. In the light of this aim, the purpose of each individual detail in an invoice is directly connected with the question as to what the tax authorities ought to be able to monitor on the basis of an invoice.

i) Monitoring payment of the correct tax

32. An invoice is intended first to enable a check on whether the person issuing the invoice has paid the tax.

33. This follows from Article 178(a) of the VAT Directive. It provides that in order to exercise the right of deduction, the recipient of a supply must hold an invoice. According to the case-law, this requirement is intended to ensure that VAT is levied and supervised.********** This is because, pursuant to this provision, deduction of input tax is allowed only if, in the form of the invoice, the tax authority can at the time obtain access to a document which, because of the particulars required by Article 226 of the VAT Directive, contains the information necessary to ensure the corresponding payment of VAT by the person who issued the invoice. This access to the person who issued the invoice is supported by Article 203 of the VAT Directive. According to it, the VAT shown in an invoice is payable by the person who issued it, regardless of whether a liability to tax has actually arisen, and in particular of whether any supply has actually been made.********** In such cases this saves the tax authority from requiring other evidence.

34. So the invoice is a type of insurance for the fiscal authority, in that in a certain sense it links the input tax deduction to payment of the tax.********** The invoice, without which no input tax deduction may be made, gives the fiscal authority at least the possibility of recovering from the person who issued the invoice the amount of money that goes out by way of input tax deduction, in that the tax authority is able to monitor payment of the corresponding tax by him.

35. However, this insurance function requires only certain details to be in an invoice, in particular the complete name and address of the taxable person who makes the supply (Article 226(5) of the VAT Directive), supplemented by his VAT identification number (Article 226(3)). By contrast, specification of the 'nature' of the supply is not necessary in the invoice in order to monitor the simple payment of

********** Cf. judgment in *Terra Baubedarf-Handel* (C-152/02, EU:C:2004:268, paragraph 37).

********** However, the person who has issued the invoice can free himself from this tax liability in certain circumstances: cf. inter alia judgment in *Schmeink & Cofreth and Strobel* (C-454/98, EU:C:2000:469).

********** To this effect, cf. also judgments in *Stroy trans* (C-642/11, EU:C:2013:54, paragraphs 31 and 32), and *LVK* (C-643/11, EU:C:2013:55, paragraphs 35 and 36).

the tax by the person who issued it. In accordance with Article 203 of the VAT Directive, as we have seen, the person who issued the invoice is in any event liable for the VAT shown in the invoice which the recipient claims by way of input tax deduction. For this purpose, it is not at all necessary to link the invoice to any supply actually carried out.

36. The fact that the mandatory details in an invoice under Article 226 of the VAT Directive thus obviously also include details which are not necessary for checking the simple payment of the tax clearly shows that this does not exhaust the function of an invoice. These details include not only the nature of the goods supplied or services rendered (Article 226(6)), but in particular also the date of the supply (Article 226(7)), the taxable amount (Article 226(8)) and the applicable rate of tax (Article 226(9)) or, as appropriate, the applicable exemption (Article 226(11)).

37. As is apparent from the legislative history of the provision,********** the function of these and other details is to state in the invoice all the 'information as to which VAT regime is applicable'.

38. These additional details thus enable the tax authorities of the Member States to monitor whether the person who issued the invoice has also calculated the *correct* tax on his supply. On the basis of these details the tax authorities in the Member States can monitor in particular whether the person who issued the invoice ascertained the place of supply (Article 31 et seq. of the VAT Directive), the taxable amount (Article 72 et seq.) and the rate of tax (Article 93 et seq.) in accordance with the law, and whether he correctly applied any tax exemption (Article 131 et seq.) or correctly assumed that the recipient of the supply and not he owed the tax (Article 192a et seq.)

39. Now such monitoring also requires there to be a description in the invoice of the supply which has been made. The correct tax depends in a number of ways on the content of the supply which has been made, as the special provisions concerning the place of supply, the rate of tax, tax exemptions and so on often depend on the content of the supply. The 'nature' of a supply must therefore be described in an invoice with a precision which is adequate for monitoring whether the correct rate of tax, a tax exemption or any other special provision has been correctly applied.***********

40. By reference to these criteria, the description used in the present case, 'legal services', appears to be sufficient in order to check whether the tax calculation is correct. This is because in my opinion there does not appear to be any provision of current EU VAT law which means that determining the correct tax depends on the particular type of legal service.**********

41. However, the Portuguese Government has submitted that in the present case a more detailed description of the nature of the legal services is necessary because Portuguese law — diverging from the VAT Directive, but covered by the status quo clause in Article 113 of the VAT Directive — provides for a reduced rate of tax for certain legal services. It is thus not apparent from the general description 'legal services' whether the standard rate or the reduced rate of tax is applicable to the services in question.

********** See point 1 of the grounds of the Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax (COM(2000) 650 final), which led to the enactment of Directive 2001/115/EC (cited above, note 8), and the Opinion of the Economic and Social Committee on this Proposal, point 1.1.1 (OJ 2001 C 193, p. 53).

********** Cf. also the Opinion of Advocate General Jacobs in *Bockemühl* (C-90/02, EU:C:2003:585, point 73).

********** I am also of the view that Article 47 of the VAT Directive, which provides for a different place of supply for 'services connected with immovable property', is a priori inapplicable, because in my opinion legal services do not fall within that provision even when connected with the sale of immovable property: cf. my Opinion in *RR Donnelley Global Turnkey Solutions Poland* (C-155/12, EU:C:2013:57, points 37 to 40).

42. If this submission as regards the national law applicable in the main proceedings is correct — which is a matter solely for the referring tribunal — it would follow that in the present case the nature of the service was not described with enough detail to enable the correct calculation of the tax to be checked.

43. Admittedly, there would be a certain tension between this conclusion and the aim pursued by the Council in enacting the provisions concerning the details required in an invoice of 'draw[ing] up a list, harmonised at Community level, of the particulars that must appear on invoices', 'in order to ensure that the internal market functions properly'.********** A person supplying legal services would thus be required to include particulars in differing detail as regards the nature of the supply depending on whether the place of supply was Portugal or another Member State.

44. However, this is ultimately the consequence of the existence of different provisions as regards reduced rates of VAT in the Member States. This affects not only the situation put forward by the Portuguese Government of status quo protection of reduced rates of tax pursuant to Article 113 of the VAT Directive. The application of the conditions laid down at Union level for reduced rates of tax under Article 98 of and Annex III to the VAT Directive is also at the discretion of each Member State. The cause of any friction in the internal market in invoices is not the requirements as regards the contents of an invoice but the lack of harmonisation in the area of reduced rates of tax.

45. If, then, the referring tribunal were to find that in the main proceedings Portuguese law provides for a reduced rate of tax for certain legal services, the general formulation 'legal services' in an invoice would not satisfy the requirements of Article 226(6) of the VAT Directive as regards the details of the 'nature' of a service.

ii) Monitoring the right of deduction

46. In addition, the invoice and its contents do not merely enable payment of the correct tax by the person who issued it to be monitored. As likewise appears from the legislative history of Article 226 of the VAT Directive, the invoice is intended to fulfil the function of 'proving' its recipient's right of deduction.**********

47. So the recipient of an invoice can also be the subject of monitoring by the tax authority by reference to the particulars in the invoice, as regards his right to deduct input tax. The question thus arises as to whether this monitoring function gives rise to more extensive requirements as regards the precision of the description of a service in an invoice.

48. The check of entitlement to an input tax deduction begins with an examination of whether the recipient of the invoice holds an invoice at all. This provides some guarantee that the invoiced service actually took place,********** which is a condition for the existence of the right of deduction.********** As already explained,********** under Article 203 of the VAT Directive all VAT in an invoice is payable by the person who issued it. As a result, there is a certain disincentive for a person to issue an invoice in respect of a service which has not been supplied at all. However, for this monitoring function of an invoice the details of the nature of the service are just as

********** See recital 4 of Directive 2001/115 (see above, point 8).

********** See the references above, note 14.

********** To this effect, cf. judgment in *Reisdorf* (C-85/95, EU:C:1996:466, paragraph 29).

********** Cf., inter alia, judgments in *Genius* (C-342/87, EU:C:1989:635) and *Fatorie* (C-424/12, EU:C:2014:50, paragraph 39).

********** See above, point 33.

unnecessary as they are as regards the check on whether the tax has actually been paid. The disincentive to issuing an invoice for a non-existent supply is based on the tax liability under Article 203 of the VAT Directive, which, as we have seen, does not depend on the description of the service.**********

49. In addition, the check on whether the person who issued the invoice stated the tax *accurately* in it, which, as I have already explained, is one of the purposes of an invoice,********** serves by way of mirror-image the check on the correct amount of the corresponding input tax deduction. But this is no more a reason for more extensive requirements as regards the description of the nature of a service than those set out above.

50. However, those requirements could arise if some further condition of the right to deduction were intended to be checked by reference to the details in the invoice, specifically the actual or intended********** use of the supplies received for taxed transactions, as required by Article 168(a) of the VAT Directive.

51. On this point, in the present proceedings both the Portuguese Government and, in substance, the Commission submitted that the description of a supply in an invoice must be sufficiently detailed to enable a check on whether the supply is in fact intended for the economic activity of the recipient of the invoice which may give rise to taxed transactions which confer entitlement to an input tax deduction.

52. I disagree with this submission, however.

53. First, it is simply not possible to describe a supply in an invoice with sufficient detail that the description of the supply itself makes clear its private or economic nature. For example, in the case of a pencil, the most detailed description of manufacturer, type and characteristics and condition of the pencil does not answer the question whether it is in fact used privately or for the purposes of an economic activity. Thus entitlement to an input tax deduction cannot be checked by reference to an invoice, because in principle the subject of every supply may be used for both private and economic purposes. This applies even for apparently clearly private services, such as for example a visit to a cinema, which in an individual case could be for the purpose of carrying on particular economic activities.

54. In the present case too, I cannot understand how a more detailed but suitably — for an invoice — concise description of 'legal services supplied' could give a clear answer to the question as to whether they were intended to be used for the purposes of the economic activity of the applicant in the main proceedings. Even the alternative descriptions suggested by the Portuguese Government such as 'representation in court action X before court Y' would not meet a requirement of enabling such a check. In this case too, to determine the entitlement to an input tax deduction one would also have to ascertain what the subject of court action X was.

55. Any doubts as to whether a supply is used for the purpose of its recipient's economic activity can thus ultimately be completely dispelled only within the framework of an inspection by the production of supplementary evidence.

56. Admittedly, it is normally in the interests of the recipient of an invoice to request as detailed a description as possible of the service from the person who issues the invoice, in order to reduce the cost of producing supplementary evidence if an inspection is carried out by the tax authorities. However, this incentive for a more detailed description of the service exists even in the absence of

********** See above, point 35.

********** See above, points 37 to 39.

********** Cf. judgment in *Gran Via Moineşti* (C-257/11, EU:C:2012:759, paragraph 27 and the case-law cited).

vague requirements as to how precise the description of the supply must be — such as 'according to the circumstances of the individual case' — which in themselves preclude as a matter of law the exercise of the right of deduction. It is precisely because the exercise of the right of deduction in accordance with Article 178(a) of the VAT Directive depends in principle on holding an invoice which fulfils the requirements of Article 226 that the requirements as to the contents of an invoice must not be excessive and must observe the principle of legal certainty. In particular where the provisions of EU law have financial consequences — in the present case the grant or refusal of the right of deduction — the persons concerned must, as stated in the case-law, be able to predict clearly how they will be applied. **********

57. Thus no more extensive requirements as regards the details in an invoice as to the nature of a service arise from the point of view of checking the entitlement of the recipient of an invoice to deduct input tax.

iii) Interim conclusion

58. In conclusion, therefore, in the present case the description of the services in the invoice fails to meet the requirements of Article 226(6) of the VAT Directive as regards the information required as to the 'nature' of a service if and only if the referring tribunal concludes that in the main proceedings Portuguese law provides for a reduced rate of tax only for certain legal services.

b) Extent of the services

59. It is not only the 'nature' of the services that Article 226 of the VAT Directive requires to be stated in an invoice, but also their 'extent'. The further question thus arises as to whether the expression 'legal services rendered from such a date until the present date', or merely 'legal services rendered until the present date', sufficiently describes the extent of the legal services.

60. The extent of a service indicates its 'amount', which is what Article 226 of the VAT Directive requires to be stated in an invoice for a supply of goods in addition to their 'nature'. In this way the invoice provides information as regards *how much* of a service is supplied.

61. However, in the present case such information is absent.

62. Nor is indicating the extent of the services substituted by indicating the time period in which the services were supplied. The quantity of services supplied in the particular time period is not evident.

63. A separate indication of the extent of the services may at most be unnecessary if their extent sufficiently appears from the description of their nature — in the context of the present case, for example, 'representation in court action X before court Y'. However, that is not what happened in the present case. This is because, in terms of their nature, the services were described as 'legal services' with such lack of precision that their extent does not appear from that description.

64. The details stated in the present case thus do not satisfy the requirements of Article 226(6) of the VAT Directive, in so far as they do not state the extent of the services supplied.

********** See only the judgment in *Cabinet Medical Veterinar Tomoiagă Andrei* (C-144/14, EU:C:2015:452, paragraph 34 and the case-law cited).

2. Date of the service

65. It must next be considered whether the statement in the invoices 'legal services rendered from such a date until the present date' or merely 'legal services rendered until the present date' satisfies Article 226(7) of the VAT Directive, which provides that an invoice must state the date on which 'the supply of … services was made or completed'.

66. The disputed invoices contain only a statement of the time period or the end date for a number of legal services, but not individual dates for individual services supplied. Yet the information provided by the referring tribunal does not indicate that the content of the service was simply being generally available to provide advice during a specified time;********** instead, it is to be presumed that the invoice was meant to charge individual services specifically supplied.

67. It is true that Article 223 of the VAT Directive permits a comprehensive invoice to cover a number of separate services. However, this does not answer the question as to whether that single invoice has to state the date of each individual service, or whether it is sufficient to state the period during which a number of services were supplied.

68. Once more it is necessary to focus on the purpose of stating this information in the invoice. As we have seen, the invoice is intended inter alia to make it possible to check whether the person who issued it has paid the correct tax.********** For this, it is necessary to know the date on which the service was supplied. It is this date — and not for example the date the invoice is issued — which in principle determines, in accordance with Article 63 of the VAT Directive, when the chargeable event under Article 62(1) of the VAT Directive occurs, and therefore also which tax provisions are applicable *ratione temporis* to the supply.

69. However, Article 64(1) of the VAT Directive lays down a special rule for services which '[give] rise to successive statements on account', which is what appears to have happened in the present case. In that scenario, the time at which the chargeable event occurs is not the date on which each individual service is supplied but the end of the period to which the statement on account relates. It follows that in this scenario it is not the date of each of the services supplied which is required in order to check payment of the correct tax, but only a statement of a period of time.

70. For the present case, this means that the statement 'legal services rendered from such a date until the present date' satisfies the requirements of Article 226(7) of the VAT Directive, whereas the statement 'legal services rendered until the present date' does not, as it does not include the date on which the period to which the statement relates commenced.

3. Conclusion

71. In conclusion, the invoices in the present case, first, do not meet the requirements of Article 226(6) of the VAT Directive as regards the statement of the 'extent' of the service; secondly, they do not meet the requirements of that provision as regards stating the 'nature' of the service only to the extent that Portuguese law provided a reduced rate of tax for only certain legal services; and, thirdly, they do not meet the requirements of Article 226(7) of the VAT Directive as regards stating the 'date' of a service to the extent that the invoices do not include any statement as regards the commencement of the relevant invoice period.

********** On this scenario, cf. judgment in *Asparuhovo Lake Investment Company* (C-463/14, EU:C:2015:542).
********** See above, points 37 and 38.

B – *Right of deduction*

72. Secondly, we must now clarify the effects of the fact that an invoice does not contain all the details required by Article 226(6) and (7) of the VAT Directive on the recipient's exercise of the right to deduct input tax.

73. The referring tribunal asks in particular whether, for the right of deduction to be exercised, it is enough that the recipient of the invoice who seeks to deduct input tax provides the information missing from the invoices using other documents. It says that, under Portuguese law, the tax authorities are entitled to require additional information from a taxable person who claims a right of deduction. The claimant in the main proceedings did indeed provide such additional information to the Portuguese tax authorities.

74. I understand the referring tribunal's description of the dispute in the main proceedings as meaning that, in the present case, all the substantive requirements under Article 168(a) of the VAT Directive for exercising the right of deduction are satisfied. Only the invoice did not meet the legislative requirements. Therefore, it must be examined whether the fact that an invoice does not contain all the details required by Article 226(6) and (7) of the VAT Directive is in itself sufficient to preclude exercising the right of deduction.

1. Requirements for exercising the right of deduction

75. To answer this question one must interpret Article 178(a) of the VAT Directive, which governs the exercise of the right of deduction. According to this provision, in order to exercise his right of deduction arising under Article 168(a) of the VAT Directive, a taxable person must 'hold an invoice drawn up in accordance with Articles 220 to 236'.

76. On its wording the legislative provision is clear. If the taxable person does not hold an invoice which satisfies the requirements of Article 226 of the VAT Directive, he may indeed have a right of deduction under Article 168(a). However, pursuant to Article 178(a) of the VAT Directive, he cannot *exercise* this right so long as he does not hold an invoice which meets the requirements of Article 226 of the VAT Directive.

77. In schematic terms, this requirement for a properly drawn up invoice in order to exercise the right of deduction is underlined by Article 181 of the VAT Directive, which concerns the exercise of the right of deduction in the case of intra-Community acquisitions of goods for consideration under Article 168(c). To exercise the right of deduction in that case, the taxable person must, in accordance with Article 178(c), likewise hold 'an invoice drawn up in accordance with Articles 220 to 236'. However, under Article 181 of the VAT Directive Member States may authorise a taxable person who does not hold an invoice drawn up in accordance with Articles 220 to 236 nonetheless to make the deduction. By contrast, there is no such provision in relation to the right of deduction in respect of the receipt of services for consideration, which is what the present case concerns. It is therefore to be concluded *e contrario* that in the present case, which arises under Article 178(a) of the VAT Directive, Member States are prohibited by EU law from granting the right of deduction if the taxable person does not hold an invoice drawn up in accordance with Article 226.

78. The case-law of the Court of Justice also confirms, in result, this fundamental necessity of holding a properly drawn up invoice in order to exercise the right of deduction where a service is supplied for consideration.

79. First, one must distinguish between an invoice which has been drawn up defectively and the infringement of other formal obligations which, according to the case-law, have no effect on the right to deduction, such as for example the fact that the supplier********** or the recipient of the supply********** is not registered for VAT, or a breach of accounting obligations.********** As regards such formal obligations, there is no provision such as Article 178(a) of the VAT Directive, which requires a person to hold a properly drawn up invoice in order to exercise the right of deduction.

80. As regards formal obligations which concern invoices, there is thus a specific legal provision. In its consistent case-law the Court has therefore held that the exercise of the right of deduction depends on the invoice containing the details required by Article 226 of the VAT Directive.********** The Member States must merely not make exercising it subject to *additional* requirements as regards the contents of an invoice which are not provided for in the VAT Directive.**********

81. Admittedly, with respect to transactions which are subject to the reverse charge procedure, the Court has emphasised in numerous judgments that the right to deduction is to be authorised if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements,********** and in that regard has to an extent also classified details in invoices as merely unimportant, formal requirements.**********

82. However, this case-law cannot be applied to the present case. First, the reverse charge procedure is a special case in which the recipient of the supply is at one and the same time both the person liable for the tax *and* the person entitled to exercise the right of deduction. Where the tax liability and the right of deduction coincide in the same person, there are no comparable functions for an invoice to fulfil as those described in the present case.********** Secondly, in the cases decided by the Court, under EU law, in order to exercise the right of deduction it was necessary only to, 'comply with the formalities as laid down by each Member State'.********** Thus, in respect of these cases concerning the reverse charge procedure, EU VAT law did not provide that it was necessary to hold a properly drawn up invoice in order to exercise the right of deduction.

83. The fact that in one individual case, *Polski Trawertyn*, the Court nonetheless applied the case-law cited above, which referred only to the special case of the reverse charge procedure, to Article 178(a) of the VAT Directive, which is the provision applicable in the present case,********** is of no relevance to the present case.

********** Judgments in *Dankowski* (C-438/09, EU:C:2010:818, paragraph 36) and *PPUH Stehcemp* (C-277/14, EU:C:2015:719, paragraph 40).

********** Judgments in *Nidera Handelscompagnie* (C-385/09, EU:C:2010:627, paragraphs 42 to 51) and *Salomie and Oltean* (C-183/14, EU:C:2015:454, paragraphs 58 to 61).

********** Judgment in *Ecotrade* (C-95/07 and C-96/07, EU:C:2008:267, paragraphs 63 to 72).

********** Judgments in *Tóth* (C-324/11, EU:C:2012:549, paragraph 32), *Maks Pen* (C-18/13, EU:C:2014:69, paragraph 47) and *PPUH Stehcemp* (C-277/14, EU:C:2015:719, paragraph 40); as regards the previous legal position, cf. also judgment in *Petroma Transports and Others* (C-271/12, EU:C:2013:297, paragraph 25 to 36).

********** Judgments in *Polski Trawertyn* (C-280/10, EU:C:2012:107, paragraph 42) and *Evita-K* (C-78/12, EU:C:2013:486, paragraph 51).

********** Judgments in *Ecotrade* (C-95/07 and C-96/07, EU:C:2008:267, paragraph 63), *Nidera Handelscompagnie* (C-385/09, EU:C:2010:627, paragraph 42), *EMS-Bulgaria Transport* (C-284/11, EU:C:2012:458, paragraph 71), and *Fatorie* (C-424/12, EU:C:2014:50, paragraph 35); indeed, see judgment in *Bockemühl* (C-90/02, EU:C:2004:206, paragraph 51).

********** Judgments in *Uszodaépítő* (C-392/09, EU:C:2010:569, paragraphs 39 to 46) and *Idexx Laboratories Italia* (C-590/13, EU:C:2014:2429, paragraphs 38 to 42).

********** See above, points 32 to 57.

********** Under Article 18(1)(d) of the Sixth Directive, or Article 178(f) of the VAT Directive.

********** Judgment in *Polski Trawertyn* (C-280/10, EU:C:2012:107, paragraph 43).

84. It is apparent that in that judgment the Court was concerned only with establishing that, where there had been a business succession, the fact that the particulars of the predecessor appeared in the invoice did not preclude the successor's right of deduction.********** So in that case details which were present in an invoice but which were incorrect did not call into question the exercise of the right of deduction under Article 178(a) of the VAT Directive.

85. However, the present case does not concern an incorrect detail but the complete absence of the necessary details from an invoice. It is one thing if the details required by Article 226 of the VAT Directive are not present at all, or not to an adequate extent, but another if they are present but incorrect.********** In the former case, the requirements of Article 178(a) in conjunction with Article 226 of the VAT Directive are not complied with even in point of form.

86. Moreover, it is only a narrow interpretation of the judgment in *Polski Trawertyn* that prevents it contradicting the consistent case-law of the Court, referred to above, which requires possession of an invoice which satisfies the requirements of Article 226 of the VAT Directive in order to exercise the right of deduction.**********

87. In the present case, then, the fact that the invoices do not comply with the requirements of Article 226(6) and (7) of the VAT Directive in principle precludes exercising the right of deduction, in accordance with Article 178(a) of the VAT Directive. Therefore, in order to be entitled to exercise his right of deduction, the taxable person in such a case must obtain a corrected invoice from the person who issued the invoice.**********

2. Supplementing with further information

88. Irrespective of this, the question arises as to whether, in the context of an inspection, it is possible to put forward additional information which can take the place of the details absent from the invoice.

a) Invoice consisting of a number of documents

89. In this regard, it must first be recalled that supplementary documents may themselves form part of the invoice within the meaning of Article 226 of the VAT Directive.

90. It cannot be inferred from the provisions of the VAT Directive that an invoice must necessarily consist of a single document. According to the statutory definition in Article 218 of the VAT Directive, 'documents or messages on paper or in electronic form' count as invoices if they meet the conditions laid down in Chapter 3, which concerns 'Invoicing'. Thus, the possibility that an invoice may consist of a number of documents is not excluded.

91. However, for an invoice to consist of several documents there must be a sufficient substantive reference in one of the documents to the other. This results from the application by analogy of Article 219 of the VAT Directive. According to that provision, 'any document or message that amends and refers specifically and unambiguously to the initial invoice' is to be treated as an invoice. Thus, if the content of an invoice emerges only from several documents, in at least one document

********** Cf. judgment in *Polski Trawertyn* (C-280/10, EU:C:2012:107, paragraph 46), referring to the Opinion of Advocate General Cruz Villalón in *Polski Trawertyn* (C-280/10, EU:C:2011:592, paragraph 72).

********** Cf. also, on the latter situation, judgment in *Maks Pen* (C-18/13, EU:C:2014:69, paragraphs 31 and 32), on the one hand, and, on the other, order in *Jagiełło* (C-33/13, EU:C:2014:184, paragraph 42).

********** See above, point 80.

********** Cf. judgments in *Pannon Gép Centrum* (C-368/09, EU:C:2010:441, paragraphs 43 and 44) and *Petroma Transports and Others* (C-271/12, EU:C:2013:297, paragraph 34).

there must be a sufficient reference to the other document. Otherwise, the content of the invoice would not emerge from it alone, and would instead be based solely on the assertion by the taxable person who claims a link between the two documents. But in that case the documents could not fulfil the monitoring function of the invoice explained above.**********

92. It will be for the referring tribunal to consider, if need be, in the main proceedings, by reference to those criteria, whether the documents produced by the applicant in the course of the inspection, assuming they likewise originate from the person who issued the invoice, are to be regarded as part of the invoice in question.

b) Principle of proportionality

93. Should, however, the referring tribunal conclude that the supplementary documents produced are not to be regarded as part of an invoice within the meaning of Article 226 of the VAT Directive, the question arises as to whether the contents of the incomplete invoices in the present case may nevertheless be completed by other information in order to exercise the right of deduction.

94. Admittedly, it has already been held that in principle Article 178(a) of the VAT Directive refuses the right of deduction in the absence of a properly drawn up invoice, so that a taxable person who wishes to exercise the right of deduction must first obtain a corrected invoice from the person who issued the original.********** However, in interpreting this provision the principle of proportionality must also be observed.********** According to that principle, when they adopt measures the EU institutions must not go beyond what is necessary in order to attain the objective pursued.**********

95. Where in a case such as the present the substantive requirements for the right of deduction under Article 168(a) of the VAT Directive are not in doubt, having regard to supplementary information, the additional requirement under Article 178(a) of holding an invoice which complies with the requirements of Article 226 must therefore serve a further specific purpose, and must not impose an excessive burden on the taxable person.

96. It must first be observed that, in a case in which there is no longer any doubt that the substantive requirements for the right of deduction are met, the monitoring function of an invoice is obviously otiose to the extent that it is intended to support monitoring of the entitlement of the right to deduction.********** To that extent it would therefore be disproportionate to require a taxable person exercising his right of deduction to obtain from the person who issued the invoice anything to supplement it.

97. However, as already seen the invoice also serves for monitoring of the payment of the correct tax by the person who issued it.********** In the present case, all he holds is a copy of an invoice which does not meet the requirements of Article 226 of the VAT Directive. To that extent the invoice, and in particular its correction, still perform a monitoring function. First, the request by the recipient of the invoice that the invoice be corrected requires the person who issued it

********** See above, points 32 to 57.

********** See above, paragraph 87.

********** As regards the requirement to interpret it in accordance with primary law, cf. simply judgments in *Sturgeon and Others* (C-402/07, EU:C:2009:716, paragraph 48), *Chatzi* (C-149/10, EU:C:2010:534, paragraph 43), *Orfey* (C-549/11, EU:C:2012:832, paragraph 32) and *Commission* v *Strack* (C-579/12 RX-II, EU:C:2013:570, paragraph 40).

********** Cf. inter alia judgments in *Omega Air and Others* (C-27/00 and C-122/00, EU:C:2002:161, paragraph 62), *Afton Chemical* (C-517/07, EU:C:2008:751, paragraph 45) and *Schaible* (C-101/12, EU:C:2013:661, paragraph 29).

********** See above, points 46 to 57.

********** See above, points 32 to 45.

himself to check whether he has correctly accounted for tax on the supply which is the subject of the invoice. Secondly, correcting the invoice also provides the tax authorities having jurisdiction over the person who issued it with a sounder basis for monitoring whether the person who issued the invoice correctly paid tax on his supply.

98. In the light of this monitoring function of the invoice as regards the person who issued it, in a case such as the present it is thus in principle proportionate to require the taxable person, in order to exercise his right of deduction, to obtain a corrected invoice from his contracting partner. This applies at any rate where the requirement to obtain such a correction does not have the effect that the content of the right of deduction changes. To that extent, in certain circumstances it might be necessary to reach a different conclusion, should the Court conclude, in parallel proceedings presently pending before it,********** that correcting an invoice may — prima facie contrary to Article 167 of the VAT Directive — also mean that the right of deduction does not arise until later.**********

99. However, independently of that, an exception to the requirement to obtain a corrected invoice in order to exercise the right of deduction may arise where correction of the invoice would no longer be capable of performing any monitoring function as regards the person who issued it. This may in particular be assumed to be the case where the company which issued it has already gone into insolvent liquidation. In that case monitoring whether the person who issued the invoice paid the correct tax is no longer necessary. Insisting on a pointless correction would in that case be disproportionate.********** Whether the same also applies if the person who issued the invoice refuses to correct it need not be decided in the present case.

100. According to the information provided by the referring tribunal, there is no reason to suppose that any such exceptional situation obtains. Consequently, in the present case it is not disproportionate to require that, to exercise the right of deduction, the applicant in the main proceedings obtains corrected invoices from the person who issued them, in order that the invoices meet the requirements of Article 226 of the VAT Directive.

3. Conclusion

101. Thus, it is to be concluded that in accordance with Article 178(a) of the VAT Directive it is in principle not sufficient, for the exercise of the right of deduction, that the recipient of an invoice who seeks to exercise that right supplements the details missing from the invoice by other information, unless that information consists of documents which are themselves part of the invoice. The conclusion is different if, in relation to the person who issued the invoice, a correction to the invoice is no longer capable of fulfilling its monitoring function.

********** *Senatex* (C-518/14, OJ 2015 C 34, p. 12).

********** For example on the basis of the powers conferred on Member States by Articles 180 and 182 of the VAT Directive.

********** This is not precluded by the statements in the Judgment in *Fatorie* (C-424/12, EU:C:2014:50), as the issue was only superficially the effects of defective invoices, and in reality the case concerned the substantive requirements of the right of deduction.

VI – Opinion

102. On the basis of the foregoing I suggest that the question referred by the Tribunal Arbitral Tributário (Tax Arbitration Tribunal, Portugal) be answered as follows:

(1) An invoice which includes, by way of details of the nature of the service, merely the description 'legal services rendered' meets the requirements of Article 226(6) of Directive 2006/112/EC, unless national law, in a manner which conforms with EU law, provides for different VAT treatment of certain legal services.

(2) An invoice which includes, by way of details of the extent of the service, merely the description 'legal services rendered from such a date until the present date' or merely 'legal services rendered until the present date' does not satisfy the requirements of Article 226(6) of Directive 2006/112/EC.

(3) An invoice which includes, by way of details of the date of a service, merely the description 'legal services rendered until the present date' does not satisfy the requirements of Article 226(7) of Directive 2006/112/EC.

(4) In accordance with Article 178(a) of Directive 2006/112/EC, it is in principle not sufficient, for the exercise of the right of deduction, that the recipient of an invoice who seeks to exercise that right supplements the details missing from an invoice, contrary to Article 226(6) and (7) of Directive 2006/112/EC, by other information, unless that other information consists of documents which are themselves to be regarded as part of the invoice. If the invoice is not corrected, in such a case it is possible to exercise the right of deduction only if the correction is in any case no longer capable of fulfilling the invoice's monitoring function in relation to the person who issued the invoice.