Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

28 May 2020*

(Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Article 90 – Articles 184 to 186 – Principle of neutrality of VAT – Adjustment of initial deduction – Discounts on intra-Community and domestic supplies of goods)

In Case C-684/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel București (Bucharest Court of Appeal, Romania), made by decision of 26 September 2018, received at the Court on 6 November 2018, in the proceedings

World Comm Trading Gfz SRL

v

Agenția Națională de Administrare Fiscală (ANAF),

Direcția Generală Regională a Finanțelor Publice Ploiești,

THE COURT (Ninth Chamber),

composed of S. Rodin, President of the Chamber, K. Jürimäe (Rapporteur) and N. Piçarra, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having considered the observations submitted on behalf of:

– World Comm Trading Gfz SRL, by L. Ionescu-Donoiu, avocată,

– the Romanian Government, initially by E. Gane, R.I. Hațieganu and C.-R. Canțăr, and subsequently by E. Gane and R.I. Hațieganu, acting as Agents,

– the European Commission, by A. Armenia and J. Jokubauskaitė, acting as Agents,

* * Language of the case: Romanian.

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 Article 90 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') and the principles of the neutrality of value added tax (VAT) and proportionality.

2 The request been made in proceedings between World Comm Trading Gfz SRL ('World Comm Trading'), a company which has its head office in Romania, and (1) the Agenția Națională de Administrare Fiscală (ANAF) (national tax administration agency, Romania) and (2) the Direcția Generală Regională a Finanțelor Publice Ploiești (regional general directorate for public finances of Ploiești, Romania), concerning an adjustment of VAT which was imposed on World Comm Trading after it was granted price reductions in respect of intra-Community and domestic supplies of goods subject to VAT.

Legal background

European Union law

3 Article 90 of the VAT Directive provides:

'1. In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

2. In the case of total or partial non-payment, Member States may derogate from paragraph 1.'

4 Article 184 of that directive reads as follows:

'The initial deduction shall be adjusted where it is higher or lower than that to which the taxable person was entitled.'

5 Article 185 of the directive provides:

'1. Adjustment shall, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled or price reductions are obtained.

2. By way of derogation from paragraph 1, no adjustment shall be made in the case of transactions remaining totally or partially unpaid or in the case of destruction, loss or theft of property duly proved or confirmed, or in the case of goods reserved for the purpose of making gifts of small value or of giving samples, as referred to in Article 16.

However, in the case of transactions remaining totally or partially unpaid or in the case of theft, Member States may require adjustment to be made.'

6 Article 186 of the directive states:

'Member States shall lay down the detailed rules for applying Articles 184 and 185.'

Romanian law

7 Article 138(c) of Legea nr. 571/2003 privind Codul fiscal (Law No 571/2003 establishing the Tax Code) of 22 December 2003 (*Monitorul Oficial al României*, Part I, No 927 of 23 December 2003), in the version in force at the material time ('the Tax Code'), provides as follows:

'the taxable amount shall be reduced … where discounts, rebates or other price reductions referred to in Article 137(3)(a) are granted after the supply of the goods or the provision of the services'.

8 Under Article 138a(1) of the Tax Code:

'In respect of the intra-Community acquisition of goods, the taxable amount shall be established on the basis of the same factors as are used in accordance with Article 137 to determine the taxable amount for domestic supply of the same goods. In the case of an intra-Community acquisition of goods, in accordance with Article 130a(2)(a), the taxable amount shall be determined in accordance with Article 137(1)(c) and Article 137(2).'

9 Point 19(1) of Hotărârea Guvernului nr. 44/2004 pentru aprobarea Normelor metodologice de aplicare a Legii nr. 571/2003 privind Codul fiscal (Government Decision No 44/2004 approving methodological standards for the application of Law No 571/2003 establishing the Tax Code (*Monitorul Oficial al României*, Part I, No 112 of 6 February 2004)), in the version in force in December 2008, provided:

'For the purposes of Article 137(3)(a) of the Tax Code, the discounts, rebates or other price reductions referred to in Article 137(3)(a) shall not be included in the taxable amount if they are granted by the supplier for the direct benefit of the recipient at the time of supply and do not, in reality, constitute remuneration for a supply. To that end, the value of the goods or services supplied shall be indicated on the invoice, exclusive of tax, and the amount deducted from the taxable amount shall be shown on a separate line with the minus sign ("-"). [VAT] is applicable to the resulting amount.'

10 Under point 20 of the government decision:

'(1) In the cases provided for in Article 138 of the Tax Code, suppliers of goods and service providers are to adjust the taxable amount after the supply, or after invoicing the supply even if the supply has not been effected, but the events referred to in Article 138 of the Tax Code have occurred after invoicing and the recording of the tax in the accounting records of the taxable person. To this end, suppliers must issue invoices stating the amounts, preceded by the minus sign ("-") where the taxable amount is reduced or, as the case may be, without the minus sign ("-") where the taxable amount is increased, and shall send such invoices to the beneficiary. The provisions of this paragraph also apply to intra-Community supplies.

(2) Beneficiaries are required to adjust the right to deduct initially exercised, in accordance with Article 148(b) and Article 149(4)(e) of the Tax Code, only in the case of the transactions referred to in Article 138(a) to (c) and (e) of the Tax Code. The provisions of this paragraph also apply to intra-Community supplies.'

The main proceedings and the questions referred for a preliminary ruling

11 On 1 April 2004, World Comm Trading, a company established in Romania, entered into a contract with Nokia Corporation ('Nokia') for the distribution of mobile telephony products.

12 Under that contract, World Comm Trading acquired numerous mobile telephony products from Nokia. Nokia supplied those goods to World Comm Trading from Finland, Germany, Hungary and Romania.

13 As regards the intra-Community supplies of those goods from Finland, Germany and Hungary, Nokia used, respectively, its Finnish, German and Hungarian VAT numbers. In respect of those supplies, Nokia issued VAT exempt invoices and World Comm Trading accounted for VAT in Romania under the reverse charge mechanism.

14 In respect of the supplies of goods made domestically within Romania, Nokia issued VAT invoices bearing its Romanian VAT number and World Comm Trading recorded the VAT as deductible.

15 Nokia gave World Comm Trading quarterly volume discounts on sales of mobile telephony products, or in other words price reductions which applied where a certain volume threshold had been achieved. The threshold was calculated without regard to the place of supply of the goods.

16 In respect of these discounts, Nokia issued a single invoice each quarter showing a negative balance with the '-' (minus) sign. That invoice showed its Finnish VAT number, even though some of the goods to which the discounts related had been supplied from Romania. World Comm Trading then accounted for the corresponding VAT in accordance with the reverse charge mechanism. It accounted for the entire value of the discounts it obtained, in fact, as relating to intra-Community transactions.

17 Following an inspection, the Romanian tax authorities concluded that World Comm Trading had not accounted for VAT correctly, in that it had not distinguished between domestic and intra-Community supplies. According to those authorities, World Comm Trading ought to have accounted for the VAT corresponding to the discounts relating to domestic supplies separately from the VAT corresponding to the discounts relating to intra-Community supplies of the goods in question. The tax authorities consequently issued a notice of assessment in the total sum of 821 377 Romanian lei (RON), (about EUR 173 855.84), which included interest and penalties for late payment.

18 In that regard, the referring court, the Curtea de Apel București (Court of Appeal of Bucharest, Romania) states, in its response to a request for further information from the Court, that that amount represents the difference between the amount originally deducted and a recalculated amount of deductible VAT, based on the taxable amount after adjustment for the discounts obtained in respect of domestic supplies of mobile telephony products in Romania.

19 By decision of 30 October 2014, the national tax administration agency rejected an objection lodged by World Comm Trading in respect of the notice of assessment referred to in paragraph 17 of this judgment.

20 After an action against that decision had been dismissed by the Tribunalul București (Regional Court, Bucharest, Romania), World Comm Trading brought an appeal against that decision before the referring court.

21 Before that court, World Comm Trading submits that the tax administration's requirement for the VAT corresponding to the discounts relating to domestic supplies to be accounted for separately from that corresponding to the discounts relating to intra-Community supplies reflects an excessive concern for matters of form. It argues that the way in which it accounted for the discounts granted by Nokia had no effect on the State budget. Furthermore, it submits, such a requirement would be contrary to the principle of the neutrality of VAT, given that, by the time of the tax inspection, Nokia had ceased trading in Romania and was no longer able to issue an invoice under a Romanian VAT number in respect of the volume discounts relating to domestic supplies of mobile telephony products in Romania.

22 In the light of those arguments, the referring court wishes to establish whether a company which has been regarded as fulfilling the substantive conditions for adjustment of its right to deduct VAT can be refused such an adjustment, on the basis that national legislation or national administrative practice prohibits the deduction of VAT in circumstances where the supplier has issued a single invoice covering goods which have been the subject of domestic supplies and goods which have been the subject of intra-Community supplies.

23 In that regard, the referring court wishes to establish, more specifically, whether the principle of proportionality precludes the national tax authorities from requiring World Comm Trading to repay the difference between the amount originally deducted and the amount of VAT recalculated as deductible. It asks, in particular, whether those authorities are entitled to require such repayment in circumstances, such as those of the main proceedings, where the taxable amount has been adjusted following discounts obtained in respect of supplies of mobile telephony products effected in Romania, despite the fact that Nokia has ceased to trade in that Member State and is no longer able to issue an invoice under its Romanian VAT number in respect of the discounts relating to the domestic supplies.

24 The referring court also wishes to establish, with reference to Article 90 of the VAT Directive, under which, it states, it is for the Member States to determine the factual circumstances in which the taxable amount is reduced, whether that provision obliges the Member States to adopt clear and foreseeable legislation in relation to the formal and substantive requirements for the exercise of the right of deduction. It wishes to know whether, in the absence of such national legislation, an undertaking can be denied the right to deduct VAT.

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

'(1) Do Article 90 of [the VAT Directive] and the principle of VAT neutrality preclude national legislation (or an administrative practice based on unclear legislation) which denies an undertaking the right to deduct VAT in proportion to the value of a discount applied to national supplies of goods on the ground that the tax invoice issued by the intra-Community supplier (as representative of an economic group) shows the global discount granted for both

[goods which have been the subject of intra-Community supplies] and [goods which have been the subject of domestic supplies, all such goods having been] supplied under the same framework agreement but recorded as purchased from the Member State of reference (from one member of the group, with a different VAT number from that borne by the invoice relating to the discount)?

(2) In the event that the first question is answered in the negative, does the principle of proportionality mean that the beneficiary cannot be denied the right to deduct VAT in proportion to the value of the discount granted globally by the intra-Community supplier in the case where the local supplier (a member of the same group) has ceased its economic activity and can no longer reduce the taxable amount of the supplies by issuing an invoice bearing its own VAT number, for the purpose of reimbursement of the excess VAT collected?'

Consideration of the questions referred

The first question

26 It should be observed as a preliminary point that, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 11 March 2020, *Rensen Shipbuilding*, C-192/19, EU:C:2020:194, paragraph 25).

27 In the present case, it must be observed that the first question concerns the interpretation of Article 90 of the VAT Directive, paragraph 1 of which relates to cases of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, and requires the Member States to reduce the taxable amount and, consequently, the amount of VAT payable by the taxable person whenever, after a transaction has been concluded, part or all of the consideration has not been received by the taxable person (judgment of 3 July 2019, *UniCredit Leasing*, C-242/18, EU:C:2019:558, paragraph 37 and the case-law cited).

28 It is clear from the indications given by the referring court that the first question is intended to establish whether the national tax authorities are entitled to issue a taxable person with a notice of assessment resulting from an adjustment of an initial deduction relating to discounts obtained on domestic supplies of goods.

29 However, it is Article 185 of the VAT Directive which concerns the specific issue of adjustment of an initial deduction in circumstances (amongst others) where a price reduction is obtained after the VAT return has been made.

30 Accordingly, the first question must be understood as seeking to establish whether Article 185 of the VAT Directive is to be interpreted as meaning that the national tax authorities may impose an adjustment of an initial deduction of VAT on a taxable person where, following a discount obtained by the taxable person in respect of domestic supplies of goods, the authorities consider that the initial deduction of VAT was higher than that to which that person was entitled.

31 In that regard, it must be recalled that Articles 184 to 186 of the VAT Directive lay down the conditions under which tax authorities may require adjustments to be made by taxable persons. The adjustment mechanism provided for in those articles is an integral part of the VAT deduction scheme established by that directive. It is intended to enhance the precision of deductions so as to ensure the neutrality of VAT (see, to that effect, judgment of 13 March 2014, *FIRIN*, C-107/13, EU:C:2014:151, paragraphs 48 and 50).

32 As regards the adjustment of input tax, Article 184 of the VAT Directive provides that the initial deduction is to be adjusted where it is higher or lower than that to which the taxable person was entitled.

33 It is apparent from Article 185(1) of that directive that an adjustment must be made to the initial deduction in circumstances (amongst others) where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, and particularly where price reductions are obtained.

34 It is apparent, reading Articles 184 and 185(1) of the VAT Directive together, that where an adjustment proves to be necessary because of the change in one of the factors used to determine the amount to be deducted, the amount of that adjustment must be calculated in such a way that the final amount to be deducted corresponds to that to which the taxable person would have been entitled if that change had been initially taken into account (see, to that effect, judgment of 16 June 2016, *Kreissparkasse Wiedenbrück*, C-186/15, EU:C:2016:452, paragraph 47).

35 In the present case, as appears from the indications given by the referring court, the discounts obtained by World Comm Trading, in relation to domestic supplies of mobile telephony products in Romania, reduced the amount of VAT deductible in respect of those supplies, as initially calculated by the tax authorities.

36 In such a case, as is apparent from the case-law of the Court referred to in paragraph 34 of this judgment, it is necessary to adjust the initial deduction of VAT in such a way that, by virtue of this change, the final amount to be deducted corresponds to that to which the taxable person would have been entitled if the change referred to had been initially taken into account.

37 The fact that the taxable person does not have a separate invoice for the discounts relating to domestic supplies, issued by the domestic supplier, but only a global invoice issued by the intra-Community supplier, which also affects the taxable amount of the domestic supplies, does not release the taxable person from the requirement to adjust the initial deduction of VAT, after obtaining a price reduction, that requirement being an integral part of the VAT deduction scheme established by the VAT Directive.

38 In the light of the foregoing considerations, the answer to the first question is that Article 185 of the VAT Directive is to be interpreted as meaning that the national tax authorities must impose an adjustment of an initial deduction of VAT on a taxable person where, following a discount obtained by the taxable person in respect of domestic supplies of goods, those authorities consider that the initial deduction of VAT was higher than that to which the taxable person was entitled.

The second question

39 By its second question, the referring court is essentially seeking to establish whether Article 185 of the VAT Directive is to be interpreted as meaning that an adjustment of an initial deduction of VAT is required, in respect of a taxable person established in a Member State, even where the supplier of that taxable person has ceased to trade in that Member State and, for that reason, is no longer able to claim partial reimbursement of the VAT it paid.

40 In the present case, it is apparent from the indications given by the referring court that, in opposing the VAT adjustment, World Comm Trading relies before that court on the fact that its supplier, which has ceased to trade in Romania, is no longer registered for VAT in that Member State, and consequently is no longer able to issue an invoice for the discounts relating to national supplies under a Romanian VAT number, or to claim partial reimbursement of the VAT it paid from the Romanian tax authorities.

41 In that regard, it must be observed that the fact that the VAT payable by the supplier of the taxable person would not itself be adjusted has no impact on the right of the competent national authority to require adjustment of the VAT deducted by a taxable person.

42 First, there is no reference to that situation in the derogations provided for in Article 185(2) of the VAT Directive, which lists the various circumstances in which no adjustment is to be made to an initial deduction.

43 Secondly, under the case-law of the Court, the fact that the VAT payable by the supplier of a taxable person has not itself been adjusted does not affect the right of the tax authority to obtain repayment of the VAT deducted by that taxable person (see, to that effect, judgment of 13 March 2014, *FIRIN*, C-107/13, EU:C:2014:151, paragraph 57).

44 In the light of the foregoing considerations, the answer to the second question is that Article 185 of the VAT Directive is to be interpreted as meaning that an adjustment of an initial deduction of VAT is required, in respect of a taxable person established in a Member State, even where the supplier of that taxable person has ceased to trade in that Member State and, for that reason, is no longer able to claim partial reimbursement of the VAT which it paid.

Costs

45 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 that:

1. **Article 185 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax is to be interpreted as meaning that the national tax authorities must impose an adjustment of an initial deduction of VAT on a taxable person where, following a discount obtained by the taxable person in respect of domestic supplies of goods, those authorities consider that the initial deduction of VAT was higher than that to which the taxable person was entitled.**

2. **Article 185 of Directive 2006/112 is to be interpreted as meaning that an adjustment of an initial deduction of value added tax (VAT) is required, in respect of a taxable person established in a Member State, even where the supplier of that taxable person has ceased to trade in that Member State and, for that reason, is no longer able to claim partial reimbursement of the VAT which it paid.**

[Signatures]