Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 1 July 2021 [1]

Case C-324/20

Finanzamt B
v
X-Beteiligungsgesellschaft mbH

(Request for a preliminary ruling from the Bundesfinanzhof (Federal Finance Court, Germany))

(Reference for a preliminary ruling – Taxation – Value added tax – Supply of services – One-time supply – Payment in instalments – Directive 2006/112/EC – Article 63 – Chargeability of tax – Article 64(1) – Concept of transactions 'giving rise to successive payments' – Article 90(1) – Reduction of the taxable amount – Concept of 'non-payment')

Introduction

1. In accordance with the principle of economic freedom and freedom of contract, market participants are free to shape their contractual relationships with respect to both the services supplied and the corresponding consideration. However, they must take into account the environment in which they operate – not just the economic environment, but also the legal one, including matters of taxation. The problems that may arise from a failure to take these considerations into account are illustrated by the present case.

2. Specifically, the question is whether and to what extent the fact that payment of consideration for a transaction subject to value added tax ('VAT') is divided into a number of instalments affects the time at which the taxable person becomes liable to pay that tax.

[1] Original language: Polish.

Legal framework

European Union law

3. Article 63 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [2] provides as follows:

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

4. However, pursuant to Article 64(1) of that directive:

'Where it gives rise to successive statements of account or successive payments … the supply of services shall be regarded as being completed on expiry of the periods to which such statements of account or payments relate.'

5. Article 66 of the directive, in turn, provides that:

'By way of derogation from Articles 63, 64 and 65, Member States may provide that VAT is to become chargeable, in respect of certain transactions or certain categories of taxable person at one of the following times:

…

(b) no later than the time the payment is received;

…'

6. Pursuant to Article 73 of the directive:

'In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.'

7. Finally, Article 90(1) of Directive 2006/112 provides:

'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.'

German law

8. Directive 2006/112 was transposed into German law by the provisions of the Umsatzsteuergesetz [3] (Law on Turnover Tax; 'the UStG').

[2] OJ 2006 L 347, p. 1.

[3] Consolidated text: BGBl. 2005 I, p. 386.

9. Paragraph 13(1)(1) of that law provides:

'Tax shall become chargeable

1. on supplies of goods and other services

(a) in cases where tax is calculated on the basis of the remuneration agreed (Paragraph 16(1), first sentence), upon expiry of the prepayment period in which the supplies of goods or services were made. This shall also apply to part supplies. Supplies are part supplies where it is agreed that certain parts of an economically divisible supply are to be paid for separately. Where the remuneration or part remuneration is received before the supply or part supply has been made, tax shall become chargeable thereon upon expiry of the prepayment period in which the remuneration or part remuneration was received,

(b) in cases where tax is calculated on the basis of the remuneration collected (Paragraph 20), upon expiry of the tax period in which the remuneration was received,

…'

10. Pursuant to Paragraph 17 of the UStG:

'1. If the taxable amount of a taxable transaction for the purposes of Paragraph 1(1)(1) has changed, the trader who made the supply shall adjust the amount of tax payable accordingly. …

2. Subparagraph 1 shall apply *mutatis mutandis* where:

(1) the consideration agreed for a taxable supply of goods or other services or a taxable intra-Community acquisition has become unrecoverable. If the consideration is received retrospectively, the amount of the tax and the [input tax] deduction shall be readjusted.

…'

11. Finally, the first sentence of Paragraph 20 of the UStG, in the version applicable during the tax year at issue, reads as follows:

'On application, the tax authority may allow a trader:

(1) whose total turnover (Paragraph 19(3)) in the preceding calendar year did not exceed EUR 500 000; or

(2) who is … exempt from the obligation to keep accounts and to draw up periodic statements on the basis of annual stock inventories; or

(3) who carries out transactions in the course of an activity as a member of a liberal profession …;

to calculate tax on the basis of the consideration received rather than on the basis of the consideration agreed (Paragraph 16(1), first sentence).'

Factual background to the dispute, the procedure in the main proceedings, and the questions referred for a preliminary ruling

12. X-Beteiligungsgesellschaft mbH, a company incorporated under German law ('X'), is registered for VAT in Germany.

13. In the 2012 tax year, X supplied services to T-GmbH ('T') as an intermediary in the latter company's sale of real estate. As shown by the fee agreement which those parties entered into on 7 November 2012, at the time the agreement was concluded, X had already supplied all the services it was obliged to supply.

14. It also follows from that agreement that the fee for the aforementioned agency services was fixed at EUR 1 000 000 plus VAT, payable in five instalments of EUR 200 000 plus VAT each. The instalments were to be paid annually starting from 30 June 2013. On the due date of each instalment, X issued an invoice and paid the VAT due.

15. By a decision of 22 December 2016, the competent tax authority held that the entire supply of services by X to T had taken place in 2012 and that it was then that X should have paid the VAT in full on the transaction in question.

16. X brought an action against that decision before the competent Finanzgericht (Finance Court, Germany). The court upheld X's action; it ruled that although the supply of services had indeed taken place in 2012, the amount of consideration for that transaction, with the exception of the first instalment, which was paid on 30 June 2013, must be regarded as unpaid within the meaning of Paragraph 17 of the UStG and Article 90(1) of Directive 2006/112. According to that court, the application of those provisions allows X to avoid the need to pay the entire VAT before receiving the entire consideration for the services provided.

17. The tax authority appealed against that ruling to the referring court. In those circumstances, the Bundesfinanzhof (Federal Finance Court, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does a service provided on a single occasion and therefore not in relation to a certain period of time give rise to successive statements of account or successive payments within the meaning of Article 64(1) of the VAT Directive merely on the basis of an agreement to pay in instalments?

(2) Alternatively, if the first question is answered in the negative: is non-payment within the meaning of Article 90(1) of the VAT Directive to be assumed if the taxable person, when providing his service, agrees that the service is to be paid for in five annual instalments and the national law relating to cases of subsequent payment provides for an adjustment by which the previous reduction in the taxable amount is cancelled again in accordance with that article?'

18. The request for a preliminary ruling was lodged at the Court on 22 July 2020. Written observations were submitted by X, the German Government and the European Commission. The Court decided not to convene a hearing.

Analysis

Preliminary observations

Findings of fact

19. In making its request for a preliminary ruling in the present case, the referring court relies on the findings of fact made by the court of first instance according to which the service provided for in the transaction at issue was a one-time transaction performed in its entirety by X in 2012, and therefore the consideration of EUR 1 000 000 plus VAT related to services performed entirely in 2012.

20. However, X contests that finding. In its view, the agreement with T covered additional services, in particular consultancy services, to be provided in subsequent years in return for further instalments of the agreed consideration. Consequently, according to that company, the consideration for the services it provided in 2012 only included the amount received on 30 June 2013. X refers in particular to its supplementary interpretation agreement with T of 15 March 2016 and to the Finanzgericht's order on the organisation of proceedings of 23 September 2020, which the company enclosed with its written observations. Therefore, in X's view, the questions referred in the present case are hypothetical in nature.

21. However, it must be borne in mind that in proceedings for a preliminary ruling, the Court is, as a rule, bound by the findings of fact made by the referring court,[4] and in the present case, those findings do not appear prima facie incorrect. In particular, the order of 23 September 2020 was issued after the referring court had already decided to refer the request for a preliminary ruling in the present case. That order was also issued in different proceedings concerning X's income tax for the 2012 tax year. Moreover, the assessment of the facts may differ with respect to the determination of income for corporate income tax purposes and with respect to the determination of the VAT liability.

22. Accordingly, I am of the view that the Court must answer the questions referred for a preliminary ruling in the present case on the basis of the findings of fact made by the referring court (or made by the court of first instance and accepted by the referring court).

Concerning the questions referred for a preliminary ruling

23. The referring court has referred two questions for a preliminary ruling in the present case. The first question concerns the interpretation of the concept of transactions 'giv[ing] rise to successive … payments' within the meaning of Article 64(1) of Directive 2006/112. The second question is whether, in a situation such as that in the main proceedings, 'non-payment' occurs within the meaning of Article 90(1) of that directive. The application of the latter provision is not dependent on the interpretation of Article 64(1) of Directive 2006/112; non-payment may also occur in respect of transactions involving successive payments. However, an affirmative answer to the second question would render the first question superfluous. I shall therefore begin with the second question.

[4] It is true that I have recently had occasion to challenge the correctness of findings of fact made by the same referring court as in the present case (see my Opinion in *XY (Optional tax reduction)*, C-100/20, EU:C:2021:387). However, the issue there was not the facts as such, but rather their classification from the point of view of EU law.

Second question referred

24. By its second question, the referring court seeks to ascertain whether Article 90(1) of Directive 2006/112 must be interpreted as meaning that where a taxable person, at the time of a one-time supply of services, agrees to the consideration being divided into a number of instalments, non-payment occurs, within the meaning of that provision, in respect of successive instalments, except for the first, and the taxable amount may be reduced accordingly and may subsequently be increased again upon payment of further instalments. This question appears to have been prompted by the fact that this was the solution adopted by the court of first instance in the main proceedings in order to enable the taxable person to avoid the need to fund the VAT liability before receiving payment for the service supplied.

25. X proposes that this question be answered in the affirmative, whereas the German Government and the Commission propose that it be answered in the negative.

26. I agree with the latter view.

27. VAT is charged in proportion to the taxable amount,[5] which is defined as 'everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply'.[6] That taxable amount is determined at the time when the tax becomes chargeable, that is to say, in the case of services, when the services are supplied.

28. However, if after the tax has become chargeable, the amount which should be received by the taxable person as payment for the provided service is reduced, the taxable amount, and consequently the amount of the taxable person's tax liability, is reduced accordingly.[7] This may either be a reduction in the strict sense of the word or a 'reduction to zero', that is to say, the complete disappearance of the taxable amount and the corresponding tax liability. Such a change may occur because of a modification or termination of the contractual relationship between the parties to the taxable transaction or because of the default by the taxable person's contractual partner on its obligation to pay the consideration.

29. The obligation to reduce the taxable amount and the corresponding tax liability, as stipulated in Article 90(1) of Directive 2006/112, is an expression of the principle according to which the taxable amount with respect to VAT is the consideration that the taxable person has actually received or is due to receive in respect of a taxable transaction.[8]

30. That objective of Article 90(1) of Directive 2006/112 means that that provision applies only where the amount to be received by the taxable person as consideration for the supply is reduced. However, if that amount is not reduced, there is no reason to reduce the taxable amount and therefore the provision does not apply. That is the case, for instance, when parties to a taxable transaction agree not to reduce the consideration but rather to divide it into a number of instalments or to defer payment.

31. Of course, in a situation where the taxable person's contractual partner defaults on the payment, the reduction in the amount to be received by the taxable person may not be final since, aside from a change in the contractual relationship between the parties, the taxable person

5 Article 1(2) of Directive 2006/112.

6 Article 73 of Directive 2006/112.

7 Article 90(1) of Directive 2006/112.

8 Judgment of 12 October 2017, *Lombard Ingatlan Lízing* (C-404/16, EU:C:2017:759, paragraph 26).

remains a creditor in respect of the unpaid consideration and may recover it in the future.[9] Therefore, uncertainty arises as to the final nature of the reduction in the taxable amount. For that reason, Article 90(2) of Directive 2006/112 enables the Member States to derogate from paragraph 1 of that article in the case of non-payment.[10]

32. This does not alter the fact that if consideration is deferred or paid in instalments, the amount *to be received* by the taxable person is certainly *not* reduced. Therefore, there is also no reason to reduce the taxable amount.[11]

33. While I agree with the German Government's assertion that any reduction in the consideration to be received by a taxable person in respect of a taxable transaction relates to situations arising *after* the supply of the service which that transaction concerns, I consider this aspect not to be essential to the answer to the question referred for a preliminary ruling. Indeed, the fundamental importance here is the fact that consideration paid in instalments does not alter the amount that the taxable person is to receive in respect of that consideration and therefore the taxable amount of the transaction in question.

34. In view of the above, in my opinion, Article 90(1) of Directive 2006/112 must be interpreted as meaning that where a taxable person making a one-time supply of services has agreed with the customer to divide the payment of consideration into a number of instalments, there is no non-payment within the meaning of that provision.

35. Moreover, as the German Government observes, under Article 90(1) of Directive 2006/112 the reduction of the taxable amount takes place on the terms laid down by the Member States, as paragraph 2 of that article allows Member States not to apply it in the case of non-payment. Pursuant to Paragraph 17(2)(1) of the UStG, in the event of non-payment, the taxable amount is reduced only if the consideration becomes unrecoverable. This is not the case where the consideration is paid in instalments. Thus, German law, which complies in this respect with Directive 2006/112, does not allow the provisions transposing Article 90 of that directive to be applied where consideration for a taxable transaction is paid in instalments.

First question referred

36. By its first question, the referring court seeks to establish, in essence, whether Article 64(1) of Directive 2006/112 must be interpreted as applying to a transaction consisting of a one-time supply of services for which the taxable person receives payment in instalments.

37. This question is based on the finding of fact made by the referring court that the supply of services at issue in the main proceedings was a one-time supply and was performed in its entirety in the 2012 tax year.[12] It is on that assumption that I base the following analysis of the first question.

[9] Judgment of 12 October 2017, *Lombard Ingatlan Lízing* (C-404/16, EU:C:2017:759, paragraph 29).

[10] Judgment of 12 October 2017, *Lombard Ingatlan Lízing* (C-404/16, EU:C:2017:759, paragraphs 28 and 29).

[11] As the German Government rightly points out, non-payment could only be deemed to have occurred if an instalment of the consideration were not paid on its due date. However, this cannot be assumed in advance.

[12] See point 19 of this Opinion.

Interpretation of Article 64(1) of Directive 2006/112

38. As a reminder, pursuant to Article 64(1) of Directive 2006/112, in the case of transactions involving successive payments, the supply of services is regarded as being completed on expiry of the periods to which such payments relate. Therefore, the answer to the question referred requires an interpretation of the concept of transactions 'giv[ing] rise to successive … payments' within the meaning of that provision.

39. Contrary to the Commission's position, I believe that the wording of the provision itself does not provide a clear answer to this question.

40. By contrast, Article 64(1) of Directive 2006/112 must be interpreted in the light of Article 63 of that directive. In accordance with the latter provision, the chargeable event occurs, and VAT becomes chargeable, when the service which is the subject of the transaction is supplied.

41. Article 63 of the directive does not specify which event is to be regarded as the time of the supply. This means, in my view, that the EU legislature has adopted a substantive approach here, that is to say, that the relevant time is the time when the supply of the service is actually completed, determined, if necessary, by findings of fact made by the tax authorities or a court.

42. In my view, therefore, Article 64(1) of the directive does not constitute a derogation from Article 63 of the directive as regards the determination of the time when VAT becomes chargeable, but merely supplements and provides clarification in situations which might give rise to doubt, since it clarifies the time when the supply of a service that involves successive payments should be regarded as being completed. That time is deemed to be the expiry of the periods to which such payments relate.

43. Logically, however, such a conventional determination of the time when the supply of services is completed is only necessary in the case of services whose time of completion is difficult to determine unambiguously on the basis of the facts alone, in particular because the legal relationship between the parties to the transaction and the service which it concerns are continuous. In this situation, the supply of the service is deemed to continue as long as the obligation to pay for it continues.

44. However, there is no need to extend the application of Article 64(1) of Directive 2006/112 to situations where the time when the supply of services is completed can be readily determined, in particular where the supply is of a one-time nature and there is a precise point in time at which its completion can be determined on the basis of the contractual relationship between the parties to the transaction, since such an extension of the scope of that provision would mean that it defines the chargeable event in a manner contrary to the express wording of Article 63 of that directive.

45. Thus, a systemic interpretation of Article 64(1) of Directive 2006/112, primarily in the light of Article 63 of that directive, suggests that the answer to the first question referred for a preliminary ruling should be in the negative. I agree in principle with the Commission's observations on this matter.

46. Moreover, as the German Government rightly observes, a different interpretation of that provision would mean that the parties to a transaction would be free to manipulate the time at which tax becomes chargeable by fixing the time of payment of the consideration for the supply of goods or services accordingly. The Court has already had occasion to hold that the EU

legislature intended to harmonise, as far as possible, the time at which VAT is to become chargeable in all the Member States in order to ensure uniform collection of VAT.[13] The objective of ensuring uniform tax collection applies not just to all Member States but also to all transactions of a similar nature, irrespective of secondary differences such as the manner in which consideration is paid. This is required by the principle of equal treatment and the need to ensure undistorted competition.

47. The occurrence and amount of VAT liability depends on only three factors: the nature of the transaction, which determines its taxability and the tax rate; the amount of consideration, that is to say, the taxable amount; and the time of supply, which is, as a rule, identical to the chargeable event. On the other hand, the time when that consideration is paid is not a relevant factor when determining taxation in the VAT system.

48. These conclusions are not called into question by the Court's case-law cited by the referring court and by X in its observations, in particular by the judgments in *Asparuhovo Lake Investment Company*[14] and *baumgarten sports & more*.[15] The application in those cases of Article 64(1) of Directive 2006/112 was based on the continuous and long-term nature of the legal relationship between the parties to the transaction, with obligations of a continuous nature resting not only with the customer but also with the service provider, and the payment of the agreed consideration being subject to the performance of those obligations.[16] However, according to the referring court's findings of fact, this is not the case in the main proceedings, which concerns the taxation of a one-time supply of services that was completed in its entirety at a certain point in time and for which the service provider is to be unconditionally paid in full.

49. In view of the above, I agree with the Commission that the expression 'successive payments' as used in Article 64(1) of Directive 2006/112 is to be understood as referring to transactions which, on account of their recurring nature, require the payment of the consideration to be spread over time or made in instalments.

50. That provision must therefore be interpreted as not applying to a transaction consisting of a one-time supply of services for which the taxable person receives payment in instalments.

Relationship between the liability to pay tax and the receipt of consideration for a taxable transaction

51. Both the referring court in its order for reference and X in its written observations submit that in a situation such as that in the main proceedings, where payment of consideration for a one-time supply is spread over a longer period (five years in this instance), with VAT being charged on the payment of each instalment, the taxable person is forced to fund the VAT in full for an extended period of time despite not having yet received payment from the customer.

13 Judgment of 2 May 2019, *Budimex* (C-224/18, EU:C:2019:347, paragraph 22).

14 Judgment of 3 September 2015 (C-463/14, EU:C:2015:542).

15 Judgment of 29 November 2018 (C-548/17, EU:C:2018:970).

16 See, respectively, judgments of 3 September 2015, *Asparuhovo Lake Investment Company* (C-463/14, EU:C:2015:542, paragraphs 47 and 49), and of 29 November 2018, *baumgarten sports & more* (C-548/17, EU:C:2018:970, paragraphs 30 and 31).

52. As I have indicated in the proposed answer to the second question referred in the present case, the application of Article 90 of Directive 2006/112 is not the correct solution to the problem in this case. Similarly, the application of Article 64(1) of that directive does not, in my view, constitute such a solution.

53. As I mentioned above, the chargeability of VAT does not, as a rule, depend on the receipt by the taxable person of consideration for the taxable transaction conducted by the taxable person. VAT may also become chargeable prior to the payment of such consideration. The Court has already had occasion to make this clear in its case-law. [17]

54. Where non-payment of the consideration provided for in the agreement between the parties to a taxable transaction is permanent, for instance as a result of the agreement being terminated or amended, or is beyond the taxable person's control, as in the case of a defaulting contractual partner, Article 90 of Directive 2006/112 applies, and the taxable amount and thus also the tax liability are reduced accordingly.

55. However, where a taxable transaction provides from the outset for the payment of the consideration to be deferred or divided into instalments, it is the taxable person who decides on the manner in which he or she conducts his or her economic activity, while being fully aware of the obligations, including tax obligations, entailed by that activity. It is up to the taxable person to decide whether to spread the payment of the consideration over time and on what terms.

56. The solution in this case is either to charge and collect the entire VAT due on the first instalment or to allocate the first instalment to the payment of VAT. [18] In this way, the taxable person is not forced to pay the tax using his or her own funds.

57. As regards X's argument that payment in full of the VAT due after receipt of the first instalment of consideration would leave the taxable person with no profit on the transaction and even deprive him or her of the means to cover the costs of the service supplied, it should be pointed out that liability to VAT does not depend on the taxable person's economic activities. [19] VAT is also charged on transactions that do not produce a profit and even on those that result in a loss. It is the task of economic operators, and not the VAT system, to ensure the profitability of their economic activity.

58. The problem in the main proceedings may have arisen due to the manner in which X invoiced the transaction at issue. According to the information contained in the request for a preliminary ruling, the company issued a separate invoice for each instalment, including the VAT on that instalment, as payment for the supply. The referring court does not state whether the tax authorities challenged this method of invoicing in the main proceedings. However, it does not appear to be correct in the light of the provisions of Directive 2006/112.

[17] '… under Article 63 of … [D]irective [2006/112], VAT is to become chargeable when the goods or the services are supplied, that is, when the transaction in question takes place, regardless whether the consideration due for that transaction has already been paid. Accordingly, VAT is due to the Treasury by the supplier of goods or services, even where he has not yet received from his client the payment relating to the transaction carried out.' Therefore, 'it follows that, under the system set up by Directive 2006/112, the chargeability of VAT and the creation and exercise of the right to deduct are, in principle, independent of whether or not the consideration, including VAT, due for a transaction has already been paid' (judgment of 28 July 2011, *Commission* v *Hungary*, C-274/10, EU:C:2011:530, paragraphs 46 and 48).

[18] According to the information provided by X in the main proceedings, the amount of the first instalment received by that company exceeded the amount of VAT due on the transaction in question.

[19] Article 9(1) of Directive 2006/112 provides that '"taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity'.

59. Directive 2006/112 lays down obligations of taxable persons in Title XI. Article 220 of that directive requires taxable persons to ensure that an invoice is issued where, inter alia, services are supplied to other taxable persons. Article 226 of that directive stipulates the details to be included on the invoice. These include, in particular, the extent and nature of the services rendered (point 6), the date on which the supply of services was completed (point 7), the taxable amount (point 8) and the VAT amount payable (point 10).

60. As the Court has already had occasion to emphasise, the mandatory details included on the invoice, including, among other things, the type of services supplied and the date of their supply, are intended to allow the tax authorities to monitor in particular the payment of the tax due.[20] That information must therefore correspond as closely as possible to the actual situation. In particular, a one-time supply should not be the subject of several invoices issued at long intervals, even if all the other details, in particular the total amount of VAT due, are correct.

61. In the main proceedings, if X had issued a single correct invoice encompassing the entire taxable amount of the transaction at issue, the full amount of VAT due and the date on which the service was supplied, it would have been able to determine its tax obligations correctly and to shape its legal relationship with the customer appropriately in terms of the manner of payment of the consideration.

62. Although it is true, as the referring court observes in its order, that the Court sometimes refers to taxable persons as 'tax collectors' on behalf of the State,[21] this in no way implies that the role of taxable persons *is limited* to that of tax collectors. Article 193 of Directive 2006/112 defines taxable persons as persons liable *to pay* VAT,[22] and there is nothing in the directive or in the Court's case-law to indicate that that obligation is conditional on the taxable person first receiving the tax as a result of an output transaction.[23]

63. By contrast, Article 66(b) of Directive 2006/112 allows Member States to provide that VAT is to become chargeable, in respect of certain transactions or certain categories of taxable person, no later than at the time the payment is received.[24] However, this derogation from the general rules contained in Articles 63, 64 and 65 of that directive is optional and should apply to certain transactions or categories of taxable person rather than being of a general nature. The very existence of such an option indirectly confirms that, in principle, the chargeability of VAT does not depend on the receipt by the taxable person of the payment for the taxable transaction.

64. As the German Government and the Commission rightly point out, the interpretation of Article 64(1) of Directive 2006/112 proposed by X, according to which merely dividing the payment of consideration into instalments makes it possible to correlate the chargeability of the tax with those instalments falling due, would render the provision of Article 66(b) of that directive largely meaningless.

[20] Judgment of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos* (C-516/14, EU:C:2016:690, paragraphs 26, 27, 29 and 30).

[21] See, in particular, judgments of 20 October 1993, *Balocchi* (C-10/92, EU:C:1993:846, paragraph 25), and of 23 November 2017, *Di Maura* (C-246/16, EU:C:2017:887, paragraph 23).

[22] Save where, under special provisions, other persons are liable to pay that tax.

[23] This is clear, for instance, from the judgment of 20 October 1993, *Balocchi* (C-10/92, EU:C:1993:846), cited by the referring court, where the Court expressly makes the obligation to pay tax conditional on the transaction having been carried out, but not on payment having been received.

[24] Such an option is provided for by Paragraph 13(1)(1)(b) of the UStG, read in conjunction with Paragraph 20 thereof, but is not applicable in the main proceedings.

65. Therefore, the arguments regarding the need to pay tax before the taxable person receives the consideration in full do not alter the conclusion stated in point 50 of this Opinion.

Conclusions

66. In the light of all the foregoing considerations, I propose that the following answer should be given to the questions referred for a preliminary ruling by the Bundesfinanzhof (Federal Finance Court, Germany):

(1) Article 64(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not applying to a transaction consisting of a one-time supply of services for which the taxable person receives payment in instalments.

(2) Article 90(1) of Directive 2006/112 must be interpreted as meaning that where a taxable person making a one-time supply has agreed with the customer to divide the payment of consideration into a number of instalments, there is no non-payment within the meaning of that provision.