Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

11 December 2025*

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 9(1) – Concept of 'taxable person' – Partners in a civil law partnership devoid of legal personality – Article 193 – Determination of the taxable person liable to pay VAT)

In Case C-796/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), made by decision of 29 November 2023, received at the Court on 21 December 2023, in the proceedings

Česká síť s. r. o.

v

Odvolací finanční ředitelství

THE COURT (Tenth Chamber),

composed of J. Passer, President of the Chamber, D. Gratsias and B. Smulders (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Česká síť s. r. o., by V. Křivánek, advokát,

– the Czech Government, by L. Březinová, M. Smolek and J. Vláčil, acting as Agents,

– the European Commission, by M. Herold and J. Hradil, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 July 2025,

* Language of the case: Czech.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 9(1) and Article 193 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2013/43/EU of 22 July 2013 (OJ 2013 L 201, p. 4) ('Directive 2006/112').

2 The request has been made in proceedings between Česká síť s. r. o., a Czech commercial company, and the Odvolací finanční ředitelství (Appellate Tax Directorate, Czech Republic), concerning an order that that company pay amounts due in respect of value added tax (VAT) and a penalty, on the ground that it was liable to pay that tax as a 'designated partner' for services provided to customers established in that Member State by undertakings with which it had cooperated and which were part of the same 'partnership' with it, within the meaning of Czech civil law.

Legal context

European Union law

3 Article 9(1) of Directive 2006/112 is worded as follows:

'"Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services … shall be regarded as "economic activity".'

4 Article 11 of that directive provides:

'After consulting the [VAT Advisory Committee], each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

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

5 Article 193 of that directive provides:

'VAT shall be payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194 to 199 and Article 202.'

6 Article 287 of Directive 2006/112 states:

'Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the following amounts at the conversion rate on the day of their accession:

…

(7) Czech Republic: EUR 35 000;

…'

Czech legislation

The Law on VAT

7 At the time of the facts in the main proceedings, the zákon č. 235/2004 Sb., o dani z přidané hodnoty (Law No 235/2004 on VAT; 'the Law on VAT') contained a special scheme for the partners in a 'partnership' within the meaning of Paragraph 2716 of the zákon č. 89/2012 Sb., občanský zákoník (Law No 89/2012 establishing the Civil Code; 'the Civil Code').

8 Paragraph 4a(3) of the Law on VAT provided that the turnover of a taxable person who was a partner in a 'partnership' within the meaning of Paragraph 2716 of the Civil Code ('the partnership') and effecting transactions which were eligible for a VAT deduction was to include the turnover achieved not only by that person independently outside of the 'partnership', but also by the entire 'partnership'.

9 Paragraph 73(7) of that law provided that, for taxable transactions effected for the 'partnership's' activities, the right to deduct VAT was to be exercised by the 'designated partner'.

10 Paragraph 100(4) of that law provided that taxable persons for the purposes of VAT who were partners in the same 'partnership' were obliged to keep separate accounting records for VAT purposes for the activity for which they established the 'partnership' and that those accounting records were to be kept for the 'partnership' by the designated partner who, on behalf of the 'partnership', was to discharge all obligations and exercise the rights arising from that law for the other partners.

The Civil Code

11 Paragraph 2716 et seq. of the Civil Code lay down the rules governing the entity called the 'partnership', that is to say, an association of persons devoid of legal personality.

12 Paragraph 2737 of the Civil Code provides that (i) if a partner deals with a third party in a common matter, that partner is to be deemed to be a mandatary of all the partners; (ii) if the partners agree otherwise, that fact cannot be invoked against a third party acting in good faith; (iii) if a partner deals with a third party in a common matter on his, her or its own behalf, the other partners may

assert the rights arising therefrom, but the third party is to be bound only vis-à-vis the person with whom that third party had legal dealings; and (iv) that provision is not to apply if the third party was aware that the partner was acting on behalf of the 'partnership'.

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

13 In 2017, Česká síť cooperated with three companies established in the United States and operating in the Czech Republic through branch offices ('the branch offices concerned').

14 Česká síť and the branch offices concerned provided services to end customers consisting principally in providing them with internet connections. Each of those branch offices dealt with its own customers and acted in its own name, and recorded income from those services for 2017.

15 The sole partner of Česká síť signed the contractual documents on behalf of the branch offices concerned and stated therein some of the contact information of Česká síť, in particular its website and email address. Furthermore, in 2009 and 2010, that company transferred to those branch offices over 170 of its customers free of charge. It provided those branch offices with the necessary infrastructure and itself purchased the internet connections needed by the end customers. All customers were connected to the internet via the same access point. The branch offices concerned did not declare any tangible or intangible assets, nor any wage costs, in the Czech Republic.

16 In November 2020, the Finanční úřad pro Plzeňský kraj (Tax Office, Pilsen , Czech Republic) issued 12 tax adjustment notices addressed to Česká síť for VAT due in respect of the monthly tax periods from January to December 2017. For each of those periods, it assessed the VAT due at 30 713 Czech koruny (CZK) (a total of CZK 368 556) and ordered Česká síť to pay a penalty (a total of CZK 73 704).

17 Those tax adjustment notices were based on the consideration that there were links between Česká síť and the branch offices concerned which led the tax authorities to conclude that there was a 'partnership', of which Česká síť was the 'designated partner'. As such, it was liable to pay VAT for the entire 'partnership'. Thus, those authorities calculated the VAT due by Česká síť by including in the tax base both taxable transactions effected by it and those effected by the branch offices concerned, as partners in the 'partnership'.

18 Česká síť brought an administrative appeal against those tax adjustment notices, which was dismissed. It then brought an appeal before the Krajský soud v Plzni (Regional Court, Pilsen, Czech Republic), which was dismissed. Lastly, it brought an appeal on a point of law before the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), which is the referring court.

19 Before the latter court, Česká síť has argued that the special scheme for partners in a 'partnership' contained in the Law on VAT at the time of the facts in the main proceedings was contrary to Directive 2006/112 inasmuch as that scheme allowed the tax authorities to deem it liable to pay VAT not only for its own taxable activities, but also for those of the branch offices concerned on the ground that, like it, they were part of the same 'partnership'.

20 That court states, first of all, that that special scheme was not intended to transpose the VAT rules applicable to a 'group of persons', as provided for in Article 11 of Directive 2006/112; next, that Paragraph 5a(1) of the Law on VAT, which was intended to make that transposition effective, provides that a member of a group cannot at the same time be a partner in a 'partnership'; and, lastly, that the tax authorities did not claim that Česká síť was part of such a group, within the meaning of the aforementioned Article 11.

21 The referring court observes that it finds that the cooperation between Česká síť and the branch offices concerned met the criteria required for the structure of their activities to be categorised as a 'partnership', the existence of a written contract not being necessary in that regard.

22 However, that court states that it shares the reservations of Česká síť inasmuch as, in its view, the latter should not have been deemed liable to pay VAT in respect of the taxable services provided by the branch offices concerned to their end customers, notwithstanding the fact that, under the relevant civil law rules, Česká síť and those branch offices constituted a single 'partnership'.

23 The referring court, further, takes the view that it is also necessary to examine the circumstances in which the partner in the 'partnership' that dealt with end customers in the context of the taxable transactions at issue before it intervened, since there may be situations in which a single partner in such a 'partnership' can bind all the partners.

24 This would, in particular, be the case when such a partner complies with the procedure provided for in Paragraph 2737(1) of the Civil Code, namely where that partner acts in a common matter as a mandatary of all the partners and on the basis of a power of attorney from them, which implies that that partner acts in the name and on behalf of all the partners and that that partner's acts bind them jointly and severally under Paragraph 2736 of that code.

25 In the present case, with regard to the manner in which the associated legal entities of the 'partnership', operating through the branch offices concerned, dealt with the end customers through those branch offices, the referring court notes that the latter acted in their own name and that the service contracts were concluded by them and not by Česká síť. The fact that the contractual documents may have contained some of that partnership's contact details has no bearing on the identification of the taxable person for the taxable transactions at issue.

26 It is also not apparent from the administrative file that the branch offices concerned ever referred to Česká síť, in their agreements or their relations with end customers, in a manner that could identify Česká síť as a partner.

27 In those circumstances, the Nejvyšší správní soud (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is [the] situation in which, pursuant to special national [VAT] arrangements for "[partnerships]" (associations of persons that do not have legal personality), a "designated partner" is liable for the payment of the VAT for the entire [partnership], despite the fact that another partner had dealt with the end customer in relation to the supply of services, compatible with [Directive 2006/112], in particular with Article 9(1) and Article 193 thereof?

Does the compatibility of the situation with Directive [2006/112] depend on whether the other partner had overstepped the rules of representing the [partnership] and dealt in his, her or its own name with the end customer?'

Consideration of the question referred

28 By its preliminary question, the referring court asks, in essence, whether Article 9(1) and Article 193 of Directive 2006/112 must be interpreted as precluding national legislation which provides that one of the partners in a civil law partnership devoid of legal personality separate from that of its partners and providing taxable services – referred to as the 'designated partner' – is to be deemed to be the person liable to pay VAT in respect of taxable services provided by the other partners in that partnership, even though those other partners have dealt with their end customers for the provision of those services, and that it is irrelevant in that regard that, in order to do so, those other partners have departed from the rules of civil law governing the representation of that partnership in relations with third parties by dealing with their end customers in their own name.

29 According to settled case-law, the terms used in Article 9 of Directive 2006/112, in particular the term 'any person who', give to the notion of 'taxable person' a broad definition focused on independence in the pursuit of an economic activity, to the effect that all persons – natural or legal, both public and private, and entities devoid of legal personality – who, in an objective manner, satisfy the criteria set out in that provision must be regarded as being taxable persons for the purposes of VAT (judgment of 16 February 2023, *DGRFP Cluj*, C-519/21, EU:C:2023:106, paragraph 69 and the case-law cited).

30 In order to determine who must be regarded in respect of the taxable transactions at issue as a 'taxable person' for the purposes of VAT, it is necessary to establish who has independently carried out the economic activity referred to. The criterion of independence concerns allocation of the transaction concerned to a particular person or entity, whilst also guaranteeing that that person or entity can exercise any right of deduction with legal certainty (see, to that effect, judgment of 16 February 2023, *DGRFP Cluj*, C-519/21, EU:C:2023:106, paragraph 70 and the case-law cited).

31 To that end, it is apparent from settled case-law that it is necessary to examine whether the person concerned carries out an economic activity in his or her own name, on his or her own behalf and under his or her own responsibility, and whether he or she bears the economic risk associated with the carrying out of those activities (judgment of 16 February 2023, *DGRFP Cluj*, C-519/21, EU:C:2023:106, paragraph 71 and the case-law cited).

32 It also follows from the Court's case-law that, where a person acts alone in relations with third parties, in their own name and on their own behalf, and assuming by themselves the economic risk associated with the taxable transactions at issue, the fact that that person has entered into a contract designating them as acting, in relations with third parties, on behalf of all the contracting parties or of the entity constituted by that contract cannot affect their status as a taxable person (see, to that effect, judgment of 16 September 2020, *Valstybinė mokesčių inspekcija (Joint activity agreement)*, C-312/19, EU:C:2020:711, paragraphs 43 to 47).

33 Furthermore, the proven existence of even close cooperation between several undertakings cannot suffice to call into question their independence for the purposes of Article 9(1) of Directive 2006/112. The choice of a type of cooperation is the result of a choice made in the organisation of those undertakings and cannot, on its own, warrant the conclusion that they do not carry out their activities independently or that they do not bear the economic risk associated with their economic activity (see, to that effect, judgment of 12 October 2016, *Nigl and Others*, C-340/15, EU:C:2016:764, paragraphs 31 and 32).

34 In the present case, while it is for the referring court, which has sole jurisdiction to assess the facts, to determine, in the light of the case-law referred to above, whether the entities at issue, namely the branch offices concerned, must be regarded as 'independently' carrying out the economic activity at issue, the Court, which is called on to provide answers of use to the referring court, may provide guidance, based on the case file in the main proceedings and on the written observations that have been submitted to it, in order to enable the national court to give judgment in the particular case pending before it (see, to that effect, judgment of 16 February 2023, *DGRFP Cluj*, C-519/21, EU:C:2023:106, paragraphs 72 and 73 and the case-law cited).

35 In that regard, it is apparent from the information provided by the referring court that that court considers that, at the time of the facts in the main proceedings, in accordance with the relevant civil law rules, Česká síť and the branch offices concerned must be regarded as the partners in a single 'partnership', that is to say a civil law partnership devoid of separate legal personality, the existence of a written contract not being necessary to reach that assessment.

36 Therefore, according to that court, under the rules of the Law on VAT laying down a special scheme for such partners, which were applicable at the time of the facts in the main proceedings, Česká síť, as a 'designated partner' of a 'partnership', had the status of a 'taxable person' for VAT purposes, within the meaning of Article 9(1) of Directive 2006/112, with regard not only to its own taxable services, but also to the services provided by the other partners in the 'partnership' and was liable to pay the VAT due on all such services under Article 193 of that directive.

37 That court further observes that that special scheme, as provided for by the Law on VAT at the time of the facts in the main proceedings, was not intended to transpose Article 11 of Directive 2006/112 and that the applicability of the rules of national law making that transposition effective has not been relied on by the tax authorities, although it does note a set of facts tending to suggest that Česká síť and the branch offices concerned were closely bound to one another by financial, economic and organisational links within the meaning of Article 11(1) of that directive.

38 However, it should be noted, as also pointed out, in essence, by the Advocate General in points 34 to 38 of her Opinion, that the possibility that, in view of those close links, the application of national rules transposing Article 11 of Directive 2006/112 could, in the present case, allow Česká síť and the branch offices concerned to be treated as a single taxable person notwithstanding the fact that they are legally independent does not seem to be excluded, if it were to be demonstrated that the distribution of sales between those four companies, which all appear to be controlled, directly or indirectly, by the sole partner of Česká síť, results from a purely artificial arrangement constituting an abuse. Such a finding would mean that the exemption provided for in point 7 of Article 287 of Directive 2006/112 for the Czech Republic would not be applicable since the combined turnover of those companies would exceed the threshold provided for in that provision.

39 If that finding cannot be made, it will be for the referring court to determine, in the light of the case-law referred to in paragraphs 29 to 33 of the present judgment, whether Česká síť or the branch offices concerned have the status of a taxable person for VAT purposes within the meaning of Article 9(1) of Directive 2006/112 in respect of taxable services provided by those branch offices. They will have that status if it is established that they provided those services while acting independently of Česká síť. This will be the case if it is established that those branch

offices carried out the economic activity in question in their own name, on their own behalf and under their own responsibility, and if they bear the economic risk associated with carrying out those activities.

40 In that regard, in the light of the information provided by the referring court and subject to verification by that court in the light of all the relevant facts of the main proceedings, the Court finds that, despite the involvement of Česká síť in the organisation of the provision of services to end customers by the branch offices concerned, those branch offices appear to be the taxable persons in respect of those services.

41 As stated by that court, those branch offices provided taxable services to their own end customers, which consisted mainly of providing internet connections. Each of those branch offices performed those services in its own name and recorded the income which it derived therefrom in the relevant tax year.

42 In the light of the case-law recalled in paragraph 33 of the present judgment, the fact that, in their relations with third parties, the branch offices concerned essentially presented themselves without directly mentioning the 'partnership' or one of its partners, in particular Česká síť, as the contracting party, even though the contractual documents contained certain elements that could prima facie indirectly identify the latter, is of particular importance in that regard.

43 The importance of that circumstance lies, in particular, in the fact that an application of the criteria for identifying the taxable person for VAT purposes in the context of the provision of taxable services by different operators who are legally independent but closely bound to one another by financial, economic and organisational links must ensure that such identification is relatively predictable and, ultimately, provide legal certainty for the third-party operators concerned, so that, especially, those operators can exercise any right of deduction with legal certainty, as required by the principle established by the case-law referred to in paragraph 30 of the present judgment.

44 The question concerning the potential impact on the answer to the question referred of the fact that, in order to carry out the taxable transactions at issue in the main proceedings, the branch offices concerned departed from the rules of national law on the representation of the 'partnership' in relations with third parties, in that they dealt with the end customer in their own name, must be answered in the negative.

45 The fact that those branch offices did not appear in relations with third parties under the rules governing the representation of the 'partnership' provided for by the applicable national civil law is irrelevant to determining whether Česká síť or the branch offices themselves are liable to pay VAT in respect of the taxable services provided by those branch offices. Its sole consequence is that the 'partnership' cannot be regarded as having provided those services itself and therefore cannot be regarded as a taxable person for VAT purposes in respect of those services (see, to that effect, judgment of 16 September 2020, *Valstybinė mokesčių inspekcija (Joint activity agreement)*, C-312/19, EU:C:2020:711, paragraph 45).

46 Lastly, in the present case, if none of the exceptions provided for in Article 193 of Directive 2006/112 were to apply, which it is for the referring court to ascertain, it would follow from that provision that the taxable person for VAT purposes in respect of the provision of services carried out by the branch offices concerned would also be liable to pay VAT.

47 The Court finds that if, once the various checks to be carried out by the referring court have been completed, it were to hold that, under Article 9(1) and Article 193 of Directive 2006/112, the branch offices concerned are the ones liable to pay VAT in respect of the taxable services provided by them, the latter provision would preclude the VAT burden from being placed on Česká síť pursuant to national legislation such as that at issue in the main proceedings, on the ground that it is the 'designated partner' of a 'partnership' which includes those branch offices as partners.

48 In the light of all the foregoing considerations, the answer to the question referred is that Article 9(1) and Article 193 of Directive 2006/112 must be interpreted as precluding national legislation which provides that one of the partners in a civil law partnership devoid of legal personality separate from that of its partners and providing taxable services – referred to as the 'designated partner' – is to be deemed to be the person liable to pay VAT in respect of taxable services provided by the other partners in that partnership, even though those other partners have dealt with their end customers for the provision of those services, and that it is irrelevant in that regard that, in order to do so, those other partners have departed from the rules of civil law governing the representation of that partnership in relations with third parties by dealing with their end customers in their own name.

Costs

49 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 (Tenth Chamber) hereby rules:

Article 9(1) and Article 193 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2013/43/EU of 22 July 2013,

must be interpreted as precluding national legislation which provides that one of the partners in a civil law partnership devoid of legal personality separate from that of its partners and providing taxable services – referred to as the 'designated partner' – is to be deemed to be the person liable to pay value added tax in respect of taxable services provided by the other partners in that partnership, even though those other partners have dealt with their end customers for the provision of those services, and that it is irrelevant in that regard that, in order to do so, those other partners have departed from the rules of civil law governing the representation of that partnership in relations with third parties by dealing with their end customers in their own name.

[Signatures]