Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

21 October 2021 *

(Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Detailed rules for the refund of VAT to taxable persons not established in the Member State of refund – Directive 2008/9/EC – Article 20(1) – Request for additional information by the Member State of refund – Elements which may be the subject of a request for additional information – Discrepancy between the amount shown in the refund application and that on the invoices submitted – Principle of good administration – Principle of VAT neutrality – Limitation period – Implications for rectifying the taxable person's error)

In Case C-396/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Supreme Court, Hungary), made by decision of 2 July 2020, received at the Court on 30 July 2020, in the proceedings

**CHEP Equipment Pooling NV**

v

**Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága,**

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer, F. Biltgen, L.S. Rossi and N. Wahl (Rapporteur), Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– CHEP Equipment Pooling NV, by Sz. Vámosi-Nagy, ügyvéd,

– the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,

– the European Commission, by J. Jokubauskaitė and Zs. Teleki, acting as Agents,

* Language of the case: Hungarian.

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 20(1) of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23).

2 The request was made in the course of proceedings between CHEP Equipment Pooling NV and the Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Administration, Hungary) regarding the latter's decision to grant only part of an application for a refund of value added tax (VAT).

## Legal context

### *European Union law*

*Directive 2008/9*

3 Recitals 1 and 2 of Directive 2008/9 are worded as follows:

'(1) Considerable problems are posed, both for the administrative authorities of Member States and for businesses, by the implementing rules laid down by Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in the territory of the country [(OJ 1979 L 331, p. 11)].

(2) The arrangements laid down in that Directive should be amended in respect of the period within which decisions concerning applications for refund are notified to businesses. At the same time, it should be laid down that businesses too must provide responses within specified periods. In addition, the procedure should be simplified and modernised by allowing for the use of modern technologies.'

4 Under Article 2 of Directive 2008/9:

'For the purposes of this Directive, the following definitions shall apply:

1. "taxable person not established in the Member State of refund" means a taxable person within the meaning of Article 9(1) of [Council] Directive 2006/112/EC [of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1)] who is not established in the Member State of refund but established in the territory of another Member State;

2. “Member State of refund” means the Member State in which the VAT was charged to the taxable person not established in the Member State of refund in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State;

…

4. “refund application” means the application for refund of VAT charged in the Member State of refund to the taxable person not established in the Member State of refund in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State;

…’

5 Article 5 of Directive 2008/9 provides:

‘Each Member State shall refund to any taxable person not established in the Member State of refund any VAT charged in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State, in so far as such goods and services are used for the purposes of the following transactions:

(a) transactions referred to in Article 169(a) and (b) of Directive 2006/112/EC;

(b) transactions to a person who is liable for payment of VAT in accordance with Articles 194 to 197 and Article 199 of Directive 2006/112/EC as applied in the Member State of refund.

Without prejudice to Article 6, for the purposes of this Directive, entitlement to an input tax refund shall be determined pursuant to Directive 2006/112/EC as applied in the Member State of refund.’

6 Article 7 of Directive 2008/9 provides as follows:

‘To obtain a refund of VAT in the Member State of refund, the taxable person not established in the Member State of refund shall address an electronic refund application to that Member State and submit it to the Member State in which he is established via the electronic portal set up by that Member State.’

7 Article 8(2)(e) of that directive states:

‘… the refund application shall set out, for each Member State of refund and for each invoice or importation document, the following details:

…

(e) taxable amount and amount of VAT expressed in the currency of the Member State of refund;

…’

8 Under Article 15 of that directive:

‘1. The refund application shall be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period. The application shall be considered submitted only if the applicant has filled in all the information required under Articles 8, 9 and 11.

2. The Member State of establishment shall send the applicant an electronic confirmation of receipt without delay.’

9 Article 18 of that directive provides:

‘1. The Member State of establishment shall not forward the application to the Member State of refund where, during the refund period, any of the following circumstances apply to the applicant in the Member State of establishment:

(a) he is not a taxable person for VAT purposes;

(b) he carries out only supplies of goods or of services which are exempt without deductibility of the VAT paid at the preceding stage pursuant to Articles 132, 135, 136, 371, Articles 374 to 377, Article 378(2)(a), Article 379(2) or Articles 380 to 390 of Directive 2006/112/EC or provisions providing for identical exemptions contained in the 2005 Act of Accession;

(c) he is covered by the exemption for small enterprises provided for in Articles 284, 285, 286 and 287 of Directive 2006/112/EC;

(d) he is covered by the common flat-rate scheme for farmers provided for in Articles 296 to 305 of Directive 2006/112/EC.

2. The Member State of establishment shall notify the applicant by electronic means of the decision it has taken pursuant to paragraph 1.’

10 Article 19 of Directive 2008/9 provides:

‘1. The Member State of refund shall notify the applicant without delay, by electronic means, of the date on which it received the application.

2. The Member State of refund shall notify the applicant of its decision to approve or refuse the refund application within four months of its receipt by that Member State.’

11 Article 20(1) of that directive provides:

‘Where the Member State of refund considers that it does not have all the relevant information on which to make a decision in respect of the whole or part of the refund application, it may request, by electronic means, additional information, in particular from the applicant or from the competent authorities of the Member State of establishment, within the four-month period referred to in Article 19(2). Where the additional information is requested from someone other than the applicant or a competent authority of a Member State, the request shall be made by electronic means only if such means are available to the recipient of the request.

If necessary, the Member State of refund may request further additional information.

The information requested in accordance with this paragraph may include the submission of the original or a copy of the relevant invoice or import document where the Member State of refund has reasonable doubts regarding the validity or accuracy of a particular claim. In that case, the thresholds mentioned in Article 10 shall not apply.'

*Directive 2006/112*

12 Under Article 1(2) of Directive 2006/112:

'The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.

The common system of VAT shall be applied up to and including the retail trade stage.'

13 Article 171(1) of that directive provides:

'VAT shall be refunded to taxable persons who are not established in the Member State in which they purchase goods and services or import goods subject to VAT but who are established in another Member State, in accordance with the detailed rules laid down in Directive [2008/9].'

***Hungarian law***

14 Paragraph 249 of the általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law No CXXVII of 2007 on value added tax) (*Magyar Közlöny* 2007/155. (XI. 16.); 'the Law on VAT') provides that VAT is to be refunded to a taxable person not established in Hungary on written request. Under Paragraph 251/E of that law, the tax authority is to issue its decision within a period of four months.

15 Under Paragraph 251/F of that law, the tax authority may request in writing additional information from the taxable person not established in Hungary and, in particular, demand from him or her the original or a certified copy of the invoice if there are reasonable doubts as to the legal basis for the refund or the amount of VAT to be refunded.

16 Under Paragraph 127(1)(a) of that law, the taxable person must be in possession of an invoice issued in his or her name which attests to the performance of the transaction.

17 Paragraph 120 of the Law on VAT states:

‘In so far as the taxable person, acting as such, uses or otherwise exploits goods or services in order to carry out a taxable supply of goods or services, he [or she] shall be entitled to deduct from the tax that he [or she] is liable to pay:

(a) the amount of tax he [or she] was charged, in connection with the purchase of the goods or the use of the services, by another taxable person – including any person or entity subject to simplified corporation tax;

…’

18 In accordance with Paragraph 4(2)(e) of the belföldön nem letelepedett adóalanyokat a Magyar Köztársaságban megillető általánosforgalmiadó-visszatéríttetési jognak, valamint a belföldön letelepedett adóalanyokat az Európai Közösség más tagállamában megillető hozzáadottértékadó-visszatéríttetési jognak érvényesítésével kapcsolatos egyes rendelkezésekről szóló 32/2009. (XII. 21.) PM rendelet (Decree 32/2009 (XII. 21.) concerning certain provisions regarding the exercise of the right of taxable persons not established in the national territory to the refund of value added tax in the Republic of Hungary and the right of taxable persons established in Hungary to the refund of value added tax in another Member State of the European Community) (*Magyar Közlöny* 2009/188.), the refund application submitted by a taxable person established in another Member State must state the basis of assessment and the amount of VAT for each invoice submitted.

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

19 CHEP Equipment Pooling, a company incorporated under Belgian law which is subject to VAT, carries on its activity in the logistics sector and specialises in the marketing of pallets. Having purchased pallets in Hungary which it then rented to its subsidiaries in different Member States, on 28 September 2017 it submitted to the Hungarian authorities, in its capacity as a taxable person for VAT purposes in Belgium, an application for the refund of input VAT paid which concerned goods and services purchased between 1 January and 31 December 2016.

20 That application was accompanied, first, by a VAT statement containing eight columns with the headings ‘invoice number’, ‘invoice date’, ‘invoice issuer’, ‘taxable amount’, ‘tax’, ‘deductible tax’, ‘denomination’ and ‘codes’ and, second, by the invoices mentioned in the statement.

21 Having found that the statement sometimes referred to invoices in respect of which VAT had already been refunded and having noticed, moreover, discrepancies between the VAT amounts set out in that statement and those stated on the invoices attached thereto, the amount invoiced being in some cases lower than that set out in that statement and in other cases higher, on 2 November 2017 the first-tier tax authority asked the applicant in the main proceedings to provide it with additional information, namely the documents and statements regarding the circumstances surrounding the financial transactions in respect of 143 invoices.

22 The applicant in the main proceedings sent the first-tier tax authority the order forms for the pallets issued by it to the haulier, the contract of sale concluded with the haulier, the contract for the rental of pallets concluded between itself and CHEP Magyarország, the invoices sent to that company in connection with the rental of pallets, the invoices it issued to customers and the list of the places where the pallets were actually located.

23 After examining the additional documents submitted by the applicant in the main proceedings, the first-tier tax authority, by decision of 29 November 2017, granted the application for a VAT refund in the amount of 254 636 343 forint (HUF) (approximately EUR 826 715 at the time). By contrast, it left the applicant in the main proceedings to bear the amount of HUF 92 803 004 (approximately EUR 301 300 at the time). That authority identified three categories of applications. First, it refused to grant the applications which had already given rise to a refund. Second, in respect of the applications in which the amount of VAT was greater than the amount shown on the corresponding invoice, it refunded only the amount shown on the invoice. Third, in respect of the applications in which the amount of VAT was lower than that shown on the corresponding invoice, it refunded only the amount shown on the refund application.

24 In a complaint against that decision, the applicant in the main proceedings claimed, in respect of the third category of applications, that the amount of VAT shown on the invoices gave it, in theory, a right to a refund of VAT that was greater than that which it had claimed in the statement.

25 The Appeals Directorate of the National Tax and Customs Administration confirmed the decision of the first-tier tax authority. It explained that the applicant in the main proceedings could not correct an error relating to the amount of its initial application for a refund without that correction constituting a new application. It stated that the applicant in the main proceedings was time-barred from submitting such an application since the time limit for such a measure expired on 30 September 2017, thus, in the present case, two days after the applicant in the main proceedings made its initial application. It added that the first-tier tax authority was not obliged to ask it for further additional information since the facts of the case in the main proceedings were easy to establish.

26 The applicant in the main proceedings brought an action before the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court, Hungary), the court at first instance.

27 The court at first instance dismissed the action. It stated that the right to a refund, the initiation of the procedure and the determination of the amount of VAT concerned by that refund was dependent on the taxable person, and that to uphold an action such as that brought by the applicant in the main proceedings would render the mechanism of the application for a refund meaningless, since it would be sufficient for the taxable person to attach the invoices on which the entitlement to a refund is based and, other than in the case of a proportional deduction, the tax authority would in any event be required to refund the maximum amount of VAT as recorded on the invoices. The court at first instance added that the tax authority was required to make use of the possibility of requesting additional information only if such information was necessary to enable it to make a reasoned decision or if it lacked essential information, which was not the case here.

28 The applicant in the main proceedings brought an appeal before the referring court, the Kúria (Supreme Court, Hungary), claiming, inter alia, that the court at first instance had breached the principle of VAT neutrality enshrined in Article 1(2) of Directive 2006/112.

29 The referring court, noting, first, that there is no limit on the number of refund applications which may be submitted before the limitation period expires and that taxable persons may correct any previous errors by submitting new applications and, second, the importance of that aspect for an application submitted shortly before the expiry of the limitation period, considers that it is essential to determine whether the tax authority is in a position to make a reasoned decision on a taxable person's application in the absence of clarification with regard to discrepancies between the amounts of VAT included in that application and those set out in the invoices submitted in support thereof.

30 It notes the similarity between the provisions of EU law and the applicable provisions of national law, since both Article 8(2)(e) of Directive 2008/9 and Paragraph 4(2)(e) of Decree 32/2009, referred to in paragraph 18 of the present judgment, require that every application must state the amount of VAT. Moreover, under Article 20(1) of that directive and Paragraph 251/F(3) of the Law on VAT, a refund decision may be made only if the tax authority has all the relevant information to make a reasoned decision, which includes the precise amount of the VAT refund applied for. Finally, just as the Hungarian language version of Article 20(1) of that directive allows the tax authority to request that the taxable person submit additional elements in respect of 'essential information', where there are justified reasons for doubting the accuracy of certain applications, the Law on VAT also allows it to contact the taxable person in case of serious doubt as to the amount of input tax in respect of which a refund is sought.

31 The referring court asks whether the tax authority may request additional information from the taxable person where, as in the present case, there is a discrepancy between the amount stated on the refund application and that shown on the invoices submitted in support of that application. Admittedly, it might be considered that that discrepancy is not essential information for the purposes of Article 20(1) of Directive 2008/9, with the result that that tax authority is not required to draw the taxable person's attention to his or her error or errors. However, the referring court instead considers that, in such a situation, that authority should request additional information, since the existence of such a discrepancy would call into question the accuracy of the application itself.

32 It was in those circumstances that the Kúria (Supreme Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 20(1) of … Directive [2008/9] be interpreted as meaning that, even where there are clear numerical discrepancies (not involving a proportional deduction) between the refund application and the invoice that are to the disadvantage of the taxable person, the Member State of refund may deem that there is no need to request additional information and that it has received all the relevant information on which to make a decision in respect of the refund?'

## The question referred for a preliminary ruling

33 By its question, the referring court asks, in essence, whether Article 20(1) of Directive 2008/9 must be interpreted as precluding the tax authority of the Member State in which an application for a VAT refund is made by a taxable person established in another Member State from taking the view that it has sufficient information to decide on that application without inviting that taxable person to provide additional information.

34 That question is raised in a context in which, first, there is a discrepancy between the amount of VAT shown on the application and the amount on the invoices submitted in support of the application, second, the application is submitted shortly before the expiry of the limitation period, which raises the question of whether the taxable person is entitled to submit either a corrected application or a new application, taking account of the errors pointed out by the tax authority, and, third, where such a discrepancy exists, the tax authority departs from the amount of VAT shown on the application and uses the amount shown on the invoice where that amount is lower and conversely uses the amount shown on the application where it is lower than that stated on the invoice, considering in that regard that it is limited by the ceiling of the amount in the refund application, with the result that the taxable person cannot receive the full amount of VAT he or she is entitled to claim.

35 As a preliminary point, it must be recalled that, in accordance with Article 1 of Directive 2008/9, the purpose of that directive is to define the rules for the refund of VAT, provided for in Article 170 of Directive 2006/112, to taxable persons not established in the Member State of refund, who meet the conditions laid down in Article 3 of Directive 2008/9, and not to define the conditions for exercising the right to a refund and the extent of that right. The second subparagraph of Article 5 of Directive 2008/9 provides that, without prejudice to Article 6 thereof, and for the purposes of that directive, entitlement to a refund of VAT which is paid as an input tax is to be determined pursuant to Directive 2006/112 as applied in the Member State of refund. The right of a taxable person established in a Member State to obtain the refund of VAT paid in another Member State, in the manner governed by Directive 2008/9, is therefore the counterpart of such a person's right established by Directive 2006/112 to deduct input VAT in his or her own Member State (judgment of 21 March 2018, *Volkswagen*, C-533/16, EU:C:2018:204, paragraphs 34 to 36 and the case-law cited).

36 Like the right to deduct, the right to a refund is a fundamental principle of the common system of VAT established by EU legislation (judgment of 11 June 2020, *CHEP Equipment Pooling*, C-242/19, EU:C:2020:466, paragraph 53), and, in principle, may not be limited. That right is exercisable immediately in respect of all the taxes charged on input transactions (judgment of 18 November 2020, *Commission* v *Germany (VAT refund – Invoices)*, C-371/19, not published, EU:C:2020:936, paragraph 79). The deduction system, and accordingly the refund system, is intended to relieve the operator entirely of the burden of the VAT due or paid in the course of all his or her economic activities. The common system of VAT therefore ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves, in principle, subject to VAT (judgment of 21 March 2018, *Volkswagen*, C-533/16, EU:C:2018:204, paragraph 38 and the case-law cited).

37 That fundamental principle of VAT neutrality requires the deduction or refund of input VAT to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements (judgment of 18 November 2020, *Commission* v *Germany (VAT refund – Invoices)*, C-371/19, not published, EU:C:2020:936, paragraph 80 and the case-law cited).

38 However, Article 15(1) of Directive 2008/9 itself places a limit on the right to a VAT refund, providing that the refund application must be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period, and that State must then forward the application to the Member State of refund, unless one of the grounds for non-transmission listed in Article 18 of that directive precludes it from doing so.

39 That first inspection carried out by the Member State of establishment is supplemented by that carried out by the Member State of refund, which may, for that purpose, pursuant to Article 20(1) of Directive 2008/9, request additional information from the applicant or the Member State of establishment.

40 It must be observed that, although the different language versions of the latter provision contain some differences in their drafting, those differences do not alter the substance of that provision, the information that may be requested by the Member State of refund being that which enables it to make a decision in respect of the whole or part of the refund application, as is apparent, moreover, from the general scheme of Directive 2008/9 and the purpose of Article 20 thereof.

41 It must be observed, in that regard, that the EU legislature, noting, as stated in recital 1 of Directive 2008/9, that the mechanism for the refund of VAT posed 'considerable problems … both for the administrative authorities of Member States and for businesses', decided, as set out in recital 2 of that directive, to make the refund process more fluid 'in respect of the period within which decisions concerning applications for refund are notified to businesses', to impose time limits within which businesses 'too must provide responses', and to allow the use of email for the communication of decisions and replies, in order for 'the procedure [to] be simplified and modernised by allowing for the use of modern technologies'.

42 Article 20 of Directive 2008/9 must be understood in that logic of fluidity, in the sense that the EU legislature wished to avoid the Member State of refund delaying its obligation to make a refund or lessening its effectiveness by making requests for information which stall the process. That is why that provision states that requests for additional information must relate to matters which enable the tax authority concerned to make a decision. In order to ensure the neutrality of the VAT system by a full refund of VAT, requests for information must therefore relate to all the relevant, and therefore necessary, information for that purpose.

43 In the present case, it is apparent from the documents before the Court that, having found discrepancies between the amounts of VAT shown on the refund application and those on the invoices submitted in support of that application, the Hungarian tax authority made use of the possibility provided for in the first subparagraph of Article 20(1) of Directive 2008/9 by requesting additional information from the applicant in the main proceedings. However, once that information had been examined, it did not avail itself of the possibility provided for in the second subparagraph of Article 20(1) of that directive of requesting further additional information, taking the view that it had sufficient information to make a decision on the refund application.

44 As noted in paragraph 23 of the present judgment, on the basis of the information provided by the taxable person, it was able to identify three types of applications, namely, first, those which had already given rise to a refund, in respect of which it did not give another refund, second, those corresponding to invoices on which the amount of VAT was lower than that shown on the refund application, in respect of which it refunded the VAT in the amount shown on those invoices, and, third, those in respect of which the amount of VAT on the invoices concerned was greater than the amount on the refund application, which gave rise to only a partial refund in the amount stated on the application. The applicant in the main proceedings contests only the refusal by the Hungarian tax authority in respect of that third type of application.

45 In that regard, it is apparent from the observations of the Hungarian Government that that refusal was due to the fact that the tax authority considered itself bound by the amount of VAT stated in the refund application and did not want to refund more than the amount stated in that application, even though the amount of VAT on the invoices potentially indicated entitlement to a larger refund.

46 In a situation such as that at issue in the main proceedings, the obligations incumbent on the taxable person must be balanced against those on the national tax authority concerned. It should thus be borne in mind that the taxable person is best placed to know the reality of the transactions in respect of which he or she is claiming a refund and that he or she must therefore, at least to a certain extent, bear the consequences of his or her own administrative conduct. He or she is bound, inter alia, by the details on the invoices which he or she issues and, in particular, by those relating to the amount of VAT and the applicable rate, in accordance with Article 226 of Directive 2006/112.

47 Moreover, in the context of its case-law relating to the possibility for Member States to introduce a limitation period for the deduction of VAT, the Court has already had occasion to point out that such a limitation period, the expiry of which has the effect of penalising a taxable person who has not been sufficiently diligent, cannot be regarded as incompatible with the regime established by Directive 2006/112, in so far as, first, that limitation period applies in the same way to analogous rights in tax matters founded on domestic law and to those founded on EU law (principle of equivalence) and, second, it does not render in practice impossible or excessively difficult the exercise of the right to deduct VAT (principle of effectiveness) (judgment of 21 March 2018, *Volkswagen*, C-533/16, EU:C:2018:204, paragraph 47).

48 As a corollary of those obligations on the person making a refund application, it must be stated that, although Directive 2008/9 does not contain provisions relating to the possibility for that person to rectify his or her refund application, except in the specific case of a change in the deductible proportion, provided for in Article 13 of that directive, which is not relevant in the present case, or the possibility of submitting a new refund application following the withdrawal of the first, it must however be recalled that, where a Member State implements EU law, the requirements pertaining to the right to good administration, which reflects a general principle of EU law, and in particular the right of every person to have his or her affairs handled impartially and within a reasonable period of time, are applicable in a tax inspection procedure. That principle of good administration requires administrative authorities, such as the tax authority in question in the main proceedings, when carrying out their inspection duties, to conduct a diligent and impartial examination of all the relevant matters so that they can be sure that, when they adopt a decision, they have at their disposal the most complete and reliable information possible for that purpose (judgment of 14 May 2020, *Agrobet CZ*, C-446/18, EU:C:2020:369, paragraphs 43 and 44).

49 Consequently, if the taxable person makes an error or errors in the refund application and neither he or she nor the tax authority concerned detect them afterwards, he or she cannot attribute liability to that authority, unless those errors are easily recognisable, in which case the tax authority must be able to detect them in the context of its inspection duties under the principle of good administration.

50 In the present case, as has been observed in paragraphs 21 and 23 of the present judgment, the Hungarian tax authority found discrepancies between the amounts of VAT shown on the refund application and those on some of the invoices submitted, whereupon it requested additional

information from the applicant in the main proceedings and then, considering that it had sufficient information, made a decision, thus complying with the wording of Article 20(1) of Directive 2008/9. If that information was in fact sufficient, which it is for the referring court to ascertain, the tax authority was not required to make a further request for additional information which would have proved unnecessary.

51 Nevertheless, since, as noted in paragraphs 36 and 37 of the present judgment, the right to a refund is a fundamental principle of the common system of VAT established by the EU legislature and the principle of VAT neutrality requires the deduction or refund of input VAT to be allowed if the substantive requirements are satisfied, it must be determined whether, by ruling in the same way as the first-tier tax authority in the present case, in the referring court's view, that is to say, by leaving the applicant in the main proceedings to bear an amount of VAT which it knew was theoretically due to it, but the contradiction between that amount of VAT and the actual amount stated in the refund application precluded recovery, the tax authority of the Member State of refund breached that principle of neutrality or, where applicable, the principle of good administration.

52 The fact that the applicant in the main proceedings submitted its refund application on 28 September 2017, when the limitation period expired on 30 September 2017, is irrelevant, since, under Article 19(2) of Directive 2008/9, the Member State of refund has a period of four months from the receipt of the refund application in which to take a decision. It follows that, while reiterating that it is for the taxable person to pay particular attention to the content of the application, the time limits inherent in the examination of a refund application lead, in a case such as that in the main proceedings, to questions being raised as to the obligation on that authority to invite the taxable person not to submit a new application, but to rectify his or her initial application in the light of comments it has made.

53 In that regard, where the taxable person is invited by the tax authority, in accordance with the principle of good administration and the principle of VAT neutrality, under which, as was noted in paragraph 37 of the present judgment, the refund of input VAT must be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements, to rectify his or her application after the tax authority has discovered an error vitiating it, it should be noted that, since a corrected application is attached to the initial application, it is deemed to have been lodged on the date of the initial application, that is to say, in circumstances such as those in the main proceedings, before the expiry of the limitation period. In the absence of any provision in Directive 2008/9 governing the possibility of correcting a refund application, apart from the specific case referred to in Article 13 of that directive which is not relevant in the present case, it is for the Member States to lay down detailed rules in that regard, in accordance with those principles.

54 Thus, where, following an error by the taxable person which has been duly detected, the tax authority concerned has been able to establish with certainty the amount of VAT to be refunded to him or her, the principle of good administration requires it, by the means it considers most appropriate, to inform the taxable person of that error diligently in order to invite him or her to rectify his or her refund application so that the tax authority may grant that refund.

55 Moreover, in the absence of such an invitation, the tax authority of the Member State concerned would disproportionately breach the principle of VAT neutrality by leaving the taxable person liable to pay the VAT in respect of which he or she is entitled to obtain a refund, whereas the common system of VAT is intended to relieve the operator entirely of the burden of the VAT due or paid in the course of all his or her economic activities.

56 In the light of the foregoing, the answer to the question referred for a preliminary ruling must be that Article 20(1) of Directive 2008/9, read in the light of the principles of fiscal neutrality and good administration, must be interpreted as meaning that it precludes the tax authority of the Member State of refund, where it is certain, where appropriate in the light of additional information provided by the taxable person, that the amount of input VAT actually paid, as stated on the invoice attached to the refund application, is higher than the amount stated in that application, from refunding the VAT only up to the latter amount, without having first invited the taxable person, diligently and by the means it considers most appropriate, to rectify his or her refund application by an application which is deemed to have been lodged on the date of the initial application.

## Costs

57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Third Chamber) hereby rules:

**Article 20(1) of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State, read in the light of the principles of fiscal neutrality and good administration, must be interpreted as meaning that it precludes the tax authority of the Member State of refund, where it is certain, where appropriate in the light of additional information provided by the taxable person, that the amount of input value added tax actually paid, as stated on the invoice attached to the refund application, is higher than the amount stated in that application, from refunding the value added tax only up to the latter amount, without having first invited the taxable person, diligently and by the means it considers most appropriate, to rectify his or her refund application by an application which is deemed to have been lodged on the date of the initial application.**

[Signatures]