Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

21 November 2024*

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Deduction of VAT – Principle of neutrality of VAT – Late submission of an application for registration – Issuing and content of invoices – Invoice which does not state input VAT – Tax calculated on the basis of a report – Absence of a correcting invoice – Right of deduction – Precluded)

In Case C-624/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad – Varna (Administrative Court, Varna, Bulgaria), made by decision of 27 September 2023, received at the Court on 10 October 2023, in the proceedings

'SEM Remont' EOOD

v

Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite,

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the First Chamber, acting as President of the Seventh Chamber, M.L. Arastey Sahún (Rapporteur), President of the Fifth Chamber, and J. Passer, Judge,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– 'SEM Remont' EOOD, by A. Bochu, M. Gouraud and B. Le Bret, avocats,

– the Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite, by D. Zhelyazkov,

– the Bulgarian Government, by T. Mitova and T. Tsingileva, acting as Agents,

* Language of the case: Bulgarian.

– the European Commission, by D. Drambozova and J. Jokubauskaitė, acting as Agents,

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 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 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('the VAT Directive'), and of the principle of neutrality of value added tax (VAT).

2 The request has been made in proceedings between 'SEM Remont' EOOD and the Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (Director of the Appeals and Tax and Social Security Practice Directorate of Varna within the National Revenue Agency, Bulgaria) concerning the refusal to grant that company the right to deduct VAT.

Legal context

European Union law

3 Article 63 of the VAT Directive provides:

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

4 Article 167 of Directive 2006/112 provides:

'A right of deduction shall arise at the time the deductible tax becomes chargeable.'

5 Article 168 of that directive is worded as follows:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

…'

6 Article 176 of that directive provides:

'The Council [of the European Union], acting unanimously on a proposal from the [European] Commission, shall determine the expenditure in respect of which VAT shall not be deductible. …

Pending the entry into force of the provisions referred to in the first paragraph, Member States may retain all the exclusions provided for under their national laws at 1 January 1979 or, in the case of the Member States which acceded to the [European] Community after that date, on the date of their accession.'

7 Article 178 of the VAT Directive provides:

'In order to exercise the right of deduction, a taxable person must meet the following conditions:

(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Sections 3 to 6 of Chapter 3 of Title XI;

…'

8 Article 179 of Directive 2006/112 provides:

'The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178.

However, Member States may require that taxable persons who carry out occasional transactions, as defined in Article 12, exercise their right of deduction only at the time of supply.'

9 Article 203 of that directive is worded as follows:

'VAT shall be payable by any person who enters the VAT on an invoice.'

10 Under Article 218 of that directive:

'For the purposes of this Directive, Member States shall accept documents or messages on paper or in electronic form as invoices if they meet the conditions laid down in this Chapter.'

11 Article 219 of the VAT Directive provides:

'Any document or message that amends and refers specifically and unambiguously to the initial invoice shall be treated as an invoice.'

12 Article 226 of that directive, which is in Section 4 of Chapter 3 of Title XI thereof, provides:

'Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

…

(3) the VAT identification number referred to in Article 214 under which the taxable person supplied the goods or services;

…

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

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

…

(8) the taxable amount per rate or exemption, the unit price exclusive of VAT and any discounts or rebates if they are not included in the unit price;

(9) the VAT rate applied;

(10) the VAT amount payable, except where a special arrangement is applied under which, in accordance with this Directive, such a detail is excluded;

…'

Bulgarian law

13 Article 25 of the Zakon za danak varhu dobavenata stoynost (Law on value added tax) (DV No 63 of 4 August 2006), in the version applicable to the dispute in the main proceedings ('the ZDDS'), provides:

'(1) Supplies of goods and services by persons subject to tax under this Law, intra-Community acquisitions and imports of goods referred to in Article 16 shall constitute a chargeable event for the purposes of this Law.

(2) … The chargeable event shall occur on the date of the transfer of ownership of the goods or of any other right in rem and of any other right to dispose of the goods as owner or on the date of performance of the supply of services.'

14 Article 71 of the ZDDS provides:

'A person shall exercise his or her right to deduct input tax where he or she satisfies at least one of the following conditions:

1. he or she possesses a tax document, drawn up in accordance with the conditions laid down in Articles 114 and 115, in which VAT is stated separately for the goods or services supplied to him or her;

…'

15 Under Article 96(1) of the ZDDS:

'Any taxable person established in Bulgarian territory with a taxable turnover of 50 000 [leva (BGN) (approximately EUR 25 600)] or more in a period not exceeding 12 consecutive months preceding the current month shall be required to submit an application for registration for the purposes of this Law within seven days of the end of the financial year in which the turnover was achieved. Where the turnover is achieved in a period not exceeding two consecutive months, including the current month, the person is required to submit the application within seven days from the date on which the turnover was achieved.'

16 Article 102 of the ZDDS provides:

‘(1) Where the tax authorities conclude that a person has not fulfilled his or her obligation to apply for registration within the time limit laid down, it shall register that person by way of a registration decision if the conditions for registration are satisfied.

(2) The decision referred to in paragraph 1 shall state the basis and the date on which the obligation to register arose.

(3) … For the purpose of determining the tax liabilities of a person who has not submitted an application for registration within the time limit despite being required to do so, that person shall be deemed to be liable to pay tax on the taxable supplies and intra-Community acquisitions he or she has made, and on the taxable supplies of services he or she has received, for which tax is payable by the recipient:

1. … for the period from the expiry of the time limit within which the registration decision should have been adopted if the person had submitted an application for registration within the time limit until the date on which he or she was registered by the tax authorities;

2. … for the period from the expiry of the time limit within which the registration decision should have been adopted if the person had submitted an application for registration within the time limit until the date on which there are no longer grounds for registration.

(4) … In the cases referred to in the second sentence of Article 96(1), for the purpose of determining the tax liabilities of a person who has not submitted an application for registration within the time limit despite being required to do so, that person shall be deemed to be liable to pay tax on the taxable supplies that result in that person exceeding the taxable turnover of BGN 50 000 [approximately EUR 25 600] from the date on which the turnover was exceeded until the date on which that person was registered by the tax authorities or until the date on which there are no longer grounds for registration. Tax shall be payable on the taxable supplies that result in that person exceeding the taxable turnover threshold. The person shall also be liable to pay tax on the taxable supplies of services for which tax is payable by the recipient and on taxable intra-Community acquisitions made during that period.

…’

17 Article 114(1) of the ZDDS is worded as follows:

‘The invoice shall contain the following details:

…

11. the unit price exclusive of tax and the taxable amount of the supply, as well as the discounts and commercial rebates granted, if they are not included in the unit price;

12. the rate of the tax and, where the rate is zero, the reasons for its application and the reasons for not paying the tax;

13. the amount of the tax;

14. the amount to be paid, if different from the amount of the taxable amount and the tax;

…’

18 Article 116 of the ZDDS provides:

‘(1) It is not permissible to make amendments or additions to invoices or notes relating to invoices. Documents which have been incorrectly drawn up or amended must be cancelled and reissued.

(2) Issued invoices and notes relating to such invoices which should show VAT, but do not do so, shall also be regarded as documents which have been incorrectly drawn up.

…

(4) If documents containing errors or corrections are included in the accounts of the supplier or the recipient of supplies, a report regarding its cancellation must also be drawn up for each of the parties, which includes the following:

1. the reason for cancellation;

2. the number and date of the cancelled document;

3. the number and date of issue of the new document;

4. the signatures of those who have drawn up the report on behalf of each party.

(5) All the copies of the cancelled documents shall be kept by the issuer and they shall be entered in the accounts of the supplier and the person to whom the supply is made in accordance with the implementing regulation.

…

(7) … The correction of invoices and notes in the event of a final act issued by the tax authority shall be carried out in accordance with paragraphs 1 to 6 where the obligation established in that act has been paid to the State Treasury into an account of the competent territorial directorate of the Natsionalna agentsia za prihodite [(National Revenue Agency, Bulgaria)] or offset by the tax authority.’

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

19 SEM Remont is a company incorporated under Bulgarian law which carries on a construction activity building underground and overground railways. SEM Remont is a taxable person for VAT purposes.

20 On 4 August 2020, SEM Remont concluded a contract with Gidrostroy – Russia OOD – a company incorporated under Russian law specialised in the provision of ships for the performance of dredging work – for the carrying out of dredging operations in the aquatic area of the port of Varna (Bulgaria). Under that contract, Gidrostroy – Russia was the supplier and SEM Remont was the service recipient.

21 On 31 October and 15 November 2020, Gidrostroy – Russia issued two invoices for SEM Remont relating to the work carried out under that contract, in the amounts of BGN 1 320 542.97 (approximately EUR 675 200) and BGN 2 440 972.26 (approximately EUR 1 248 100) respectively. On the dates those invoices were issued, Gidrostroy – Russia was not registered for VAT in Bulgaria under the ZDDS and therefore did not state VAT on those invoices. The works at issue were carried out in due course for the service recipient ES BILD, a company formed between SEM Remont and EIS – Stroitelna kompania AD, the representative of Gidrostroy – Russia in Bulgaria.

22 Gidrostroy – Russia submitted its application for registration for VAT purposes on 26 November 2020. A registration decision was issued to Gidrostroy – Russia on 10 December 2020 and served on Gidrostroy – Russia on 11 December 2020.

23 Gidrostroy – Russia was the subject of a tax inspection which established that that company had exceeded, from 9 December 2019, the taxable turnover threshold laid down in Article 96(1) of the ZDDS, warranting its registration for VAT, and that it should therefore have submitted, pursuant to that provision, an application for registration under that law by 16 December 2019 at the latest. In the absence of fulfilling that obligation, that company was therefore deemed to be liable for VAT on the supplies exceeding the threshold for the period from 9 December 2019 to the date of its actual registration pursuant to Article 96(1) of the ZDDS, namely 11 December 2020.

24 On 11 December 2020, the tax authority requested that Gidrostroy – Russia calculate the VAT on the taxable transactions in respect of that period and provide a report pursuant to Article 117(1)(1) of the ZDDS. By letter of 12 July 2021, that company notified the tax authority of that report, dated 29 June 2021, calculating that VAT, in which Gidrostroy – Russia appeared to be the supplier and recipient of those transactions. That report mentioned, inter alia, the two invoices of 31 October and 15 November 2020, for a total VAT amount of BGN 752 303.05 (approximately EUR 384 650).

25 EIS – Stroitelna kompania, the representative of Gidrostroy – Russia in Bulgaria, whose bank account was used to pay Gidrostroy – Russia's tax liabilities in that Member State, concluded a contract, on 13 July 2021, with SEM Remont, under which SEM Remont granted EIS – Stroitelna kompania a loan in the amount of BGN 752 303.05, identical to the amount of VAT stated in the report in respect of those two invoices. The amount of that loan was actually used by EIS – Stroitelna kompania to pay that VAT to the Bulgarian State Treasury.

26 SEM Remont entered in its purchase ledger and in the VAT return, for the December 2021 tax period, a right to deduct VAT in the amount of BGN 753 390.12 (approximately EUR 385 200), on the basis of the report.

27 The tax authority, however, found that, on the date of issue of that report, the chargeable event for the tax liability had not occurred and that, consequently, VAT was not payable. In those circumstances, that authority concluded that SEM Remont did not satisfy the conditions for deduction of VAT referred to in Article 71 of the ZDDS, since SEM Remont did not hold invoices stating VAT. It considered, in that regard, that that report was not a valid document attesting to the existence of a right of deduction.

28 Accordingly, pursuant to Article 25(1) and (4) of the ZDDS, read in conjunction with Article 71(1) of that law, the tax authority refused to grant SEM Remont the right to deduct the VAT at issue.

29 That refusal of the tax authority was, in addition, based on the fact that the VAT linked to the supplies received from Gidrostroy – Russia had been calculated following the tax inspection procedure in respect of that company, pursuant to Article 102(4) of the ZDDS. In that regard, that tax authority upheld the interpretation of that provision by the Konstitutsionen sad (Constitutional Court, Bulgaria), according to which the supplier of a taxable transaction who has not submitted an application for registration within the time limit laid down is required to pay VAT on that transaction, but is not entitled to correct the invoices issued in the period between the date on which that supplier reached the taxable turnover threshold from which registration for VAT is compulsory and the date on which that supplier was actually registered for VAT.

30 SEM Remont brought an appeal against the decision of the tax authority refusing SEM Remont the right to deduct VAT before the Administrativen sad – Varna (Administrative Court, Varna, Bulgaria), which is the referring court. That court is uncertain as to the compatibility with the VAT Directive and the principle of neutrality of VAT of the provisions of national law and the practice of the national authority under which, in a situation such as that in the main proceedings, the recipient of a supply is refused the right to deduct VAT where the supplier, who was not registered for VAT, issued an invoice without stating VAT, but was registered for VAT at the request of the tax authority after the supply took place, and issued, following an inspection, not a correcting invoice, but a report, in which it appears as the supplier and recipient of that transaction, referring to the invoice in question, the taxable amount and the VAT which is applied to that taxable amount.

31 In those circumstances, the Administrativen sad – Varna (Administrative Court, Varna) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is a practice on the part of the revenue office permitted pursuant to Articles 63 [and] 167, [Article] 168(a), [Article] 178(a), [and Articles] 218 to 220, 226 and 228 of [the VAT Directive] as regards the application of national provisions and in particular of Article 71(1) of the [ZDDS] in conjunction with Article 25(1) of the ZDDS in conjunction with Article 102(4), [and Articles] 114, 116 and 117 of the ZDDS in conjunction with Articles 125 and 126 of the ZDDS, that practice being one in accordance with which the recipient of a service subject to VAT was refused the right of deduction both for the period in which the service was rendered and also for the period of its declaration in the tax return on the ground that no VAT was indicated on the invoice issued to the recipient by the service provider and, at a later date (during the [tax inspection] of the service provider), a document was issued that does not meet the requirements regarding the content of invoices (a memorandum was drawn up in which its author was described as both the recipient and provider of the service according to the memorandum) and in which the invoice issued to the recipient of the service was declared and VAT was calculated on the basis of the taxable amount indicated therein, which VAT was paid, and the recipient of the service only afterwards claimed the right of deduction (“right to claim a tax credit” under the ZDDS) on the basis of that memorandum, and is the exercise of the right of deduction rendered practically impossible or excessively difficult for the taxable person as a result of such a practice?

(2) If the first question is answered in the negative: At what point can the right of deduction be exercised, at the time when the invoice is issued without VAT being indicated therein or at the time when the memorandum is issued by the service provider?

(3) Is a provision such as Article 102(4) of the ZDDS and a practice on the part of the national tax authority permitted under Article 203, in conjunction with [Article 178(a)] and [Article] 176 of the VAT Directive and the principle of tax neutrality, whereby a provider of a service that is subject to VAT who has not submitted an application for registration under the ZDDS within the period prescribed by law from the time when he was required to register under the ZDDS is required only to pay VAT in respect of the services he provided in the period from the date on which the registration obligation arose until registration with the revenue office, without any provision being made for the service provider in respect of whom VAT liability has been established pursuant to Article 102(4) of the ZDDS to be able to issue corrected invoices (or another document) to the recipients of services so that they can exercise the right of deduction?'

Consideration of the questions referred

The first question

32 By its first question, the referring court seeks to ascertain, in essence, whether the VAT Directive must be interpreted as precluding legislation of a Member State under which the recipient of a supply subject to VAT is denied the right to deduct that tax, provided for by that directive, where the supplier, first, has failed to fulfil its obligation, laid down by the national legislation, to submit an application for registration for VAT purposes and issued for the recipient invoices not stating VAT, and, second, issued, during a tax inspection, a report stating that VAT and in which that supplier was put forward as also being the recipient of that supply.

33 According to settled case-law, the right to deduct provided for in Article 167 et seq. of the VAT Directive is an integral part of the VAT scheme and may not, in principle, be limited. In particular, the right to deduct is exercisable immediately in respect of all the taxes charged on input transactions (judgment of 13 January 2022, *Zipvit*, C-156/20, EU:C:2022:2, paragraph 21 and the case-law cited).

34 However, that right of deduction is subject to compliance with certain requirements, in particular, the requirement, laid down in Article 168(a) of the VAT Directive, that the VAT in respect of which deduction is sought must be due or paid (judgment of 13 January 2022, *Zipvit*, C-156/20, EU:C:2022:2, paragraph 22).

35 It is true that the Court has held that, when the price has been established by the parties without any reference to VAT and the supplier is the taxable person for the VAT owing on the taxed transaction, the price agreed must be regarded, in a case where the supplier is not able to recover from the purchaser the VAT claimed by the tax authorities, as already including VAT (judgments of 7 November 2013, *Tulică and Plavoșin*, C-249/12 and C-250/12, EU:C:2013:722, paragraph 43; and of 13 January 2022, *Zipvit*, C-156/20, EU:C:2022:2, paragraph 23; see, to that effect, judgment of 1 July 2021, *Tribunal Económico Administrativo Regional de Galicia*, C-521/19, EU:C:2021:527, paragraphs 30 to 34).

36 However, in the present case, as is apparent from the order for reference, the invoices at issue referred only to the taxable amount exclusive of VAT, that tax having been indicated only in the report issued by the supplier, namely Gidrostroy – Russia, during the tax inspection.

37 In those circumstances, the presumption laid down in the case-law referred to in paragraph 35 above does not apply in the case in the main proceedings.

38 As regards that report, it must be observed that, admittedly, in the judgment of 29 September 2022, *Raiffeisen Leasing* (C-235/21, EU:C:2022:739, paragraph 46), the Court held that Article 203 of the VAT Directive must be interpreted as meaning that a contract, the conclusion of which was not followed by the issue of an invoice by the parties, may be regarded as an invoice, within the meaning of that provision, where that contractual agreement contains all the information necessary for the tax authorities of a Member State to be able to establish whether the substantive conditions for the right to deduct VAT are satisfied in the case.

39 However, first, the report at issue in the present case, issued by Gidrostroy – Russia, which stated that that company was both a supplier and recipient of the transaction concerned and which was provided not to SEM Remont but to the tax authority during an inspection carried out by that authority, cannot be treated in the same way as a contract between the parties, such as the contract which is the subject of the judgment referred to in the preceding paragraph.

40 Second, as is apparent from the case-law of the Court, the VAT Directive and the fundamental principle of neutrality of VAT require the deduction of input VAT to be allowed if the substantive requirements are satisfied, even if the taxable persons have failed to comply with some formal conditions (see, to that effect, judgment of 29 September 2022, *Raiffeisen Leasing*, C-235/21, EU:C:2022:739, paragraph 38 and the case-law cited).

41 It must be held that, in the case in the main proceedings, the VAT was not paid by SEM Remont and was not payable by SEM Remont. The tax authority found that the invoices in question had been issued for a transaction carried out at a later stage by Gidrostroy – Russia, the recipient of that transaction being the company ES BILD, formed between SEM Remont and EIS – Stroitelna kompania.

42 That finding is not called into question by the existence of a loan contract – covering the amount in respect of which the deduction of VAT was refused to SEM Remont – concluded between SEM Remont and EIS – Stroitelna kompania as the representative of Gidrostroy – Russia, since such a contract does not create an obligation for SEM Remont to pay VAT to the supplier and does not constitute a correction of the invoices issued by Gidrostroy – Russia for SEM Remont.

43 In those circumstances, the requirements, referred to in paragraph 34 above, to which the right to deduct VAT is subject cannot be regarded as being met.

44 In the light of the foregoing considerations, the answer to the first question is that the VAT Directive must be interpreted as not precluding legislation of a Member State under which the recipient of a supply subject to VAT is denied the right to deduct that tax, provided for by that directive, where the supplier, first, has failed to fulfil its obligation, laid down by that legislation, to submit an application for registration for VAT purposes and issued for the recipient invoices not stating VAT, and, second, issued, during a tax inspection, a report stating that VAT and in which that supplier was put forward as also being the recipient of that supply.

The second question

45 By its second question, the referring court asks, in essence, whether, in the case referred to in the first question, the right to deduct VAT arises when the invoice not stating that tax is issued or when the supplier issues the report.

46 In view of the answer to the first question, the second question has become devoid of purpose and there is therefore no need to answer it.

The third question

47 By its third question, the referring court seeks to ascertain, in essence, whether the VAT Directive and the principle of neutrality of VAT must be interpreted as precluding legislation of a Member State which rules out the possibility of correcting an invoice where, first, the invoice which the supplier has provided to the recipient of a supply subject to VAT did not state that tax and, second, during a tax inspection of that supplier, the supplier drew up a report stating the VAT and putting forward the supplier as also being the recipient of that supply.

48 Although the Court has recognised that the fundamental principle of VAT neutrality requires that the deduction or refund of input VAT be allowed even if the taxable person has failed to comply with some of the formal requirements, that is subject to the condition that the substantive requirements have otherwise been satisfied (judgment of 8 December 2022, *Luxury Trust Automobil*, C-247/21, EU:C:2022:966, paragraph 59 and the case-law cited).

49 At the same time, the case-law of the Court on the retroactive correction of invoices concerns the deduction of paid input VAT.

50 In that regard, in the judgment of 15 September 2016, *Senatex* (C-518/14, EU:C:2016:691, paragraph 43), the Court held that Article 167, Article 178(a), Article 179 and Article 226(3) of Directive 2006/112 must be interpreted as precluding national legislation, under which the correction of an invoice in relation to a detail which must be mentioned, namely the VAT identification number, does not have retroactive effect, so that the right to deduct VAT exercised on the basis of the corrected invoice relates not to the year in which the invoice was originally drawn up but to the year in which it was corrected.

51 However, in the case which gave rise to that judgment, the input VAT had been paid by the company which had stated in its tax returns a deduction of that VAT.

52 As is apparent from the judgment of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos* (C-516/14, EU:C:2016:690, paragraph 44), the tax authorities cannot restrict themselves to examining the invoice itself. They must also take account of the additional information provided by the taxable person. That conclusion is confirmed by Article 219 of the VAT Directive, which treats as an invoice any document or message that amends and refers specifically and unambiguously to the initial invoice.

53 Therefore, in that latter judgment, the Court held that Article 178(a) of the VAT Directive must be interpreted as precluding the national tax authorities from refusing the right to deduct VAT solely because the taxable person holds an invoice which does not satisfy the conditions required

by Article 226(6) and (7) of that directive, even though those authorities have available all the necessary information for ascertaining whether the substantive conditions for the exercise of that right are satisfied.

54 Moreover, in the case that gave rise to the judgment of 15 September 2016, *Barlis 06 – Investimentos Imobiliários e Turísticos* (C-516/14, EU:C:2016:690) input VAT had been paid by the company receiving the services subject to VAT, which had claimed the deduction of that tax.

55 In the light of the considerations relating to the first question in the present case, concerning the absence of a right on the part of SEM Remont to deduct VAT, it should be stated that, in accordance with the case-law of the Court, the mechanism for the adjustment of undue VAT deductions provided for by the VAT Directive is not applicable when the deduction was initially made in the absence of any right of deduction (see, to that effect, judgment of 11 April 2018, *SEB bankas*, C-532/16, EU:C:2018:228, paragraphs 42 and 43).

56 In addition, in the judgment of 8 May 2013, *Petroma Transports and Others* (C-271/12, EU:C:2013:297, paragraphs 34 and 35), the Court held that, although the common system of VAT does not prohibit the correction of incorrect invoices, the fact remains that, with regard to the dispute in the main proceedings in the case which gave rise to that judgment, the information necessary to complete and regularise those invoices had been submitted after the tax authority had adopted its decision to refuse the right to deduct VAT. Therefore, before that decision was adopted, the invoices provided to that authority had not yet been rectified to enable it to ensure the correct collection of VAT and to permit supervision thereof.

57 In paragraph 36 of that judgment, the Court held that the harmonised VAT system does not preclude national legislation under which the right to deduct VAT may be refused to taxable persons who are recipients of services and are in possession of invoices which are incomplete, even if those invoices are supplemented by the provision of information seeking to prove the occurrence, nature and amount of the transactions invoiced after such a refusal decision was adopted.

58 In the judgment of 23 April 2015, *GST – Sarviz Germania* (C-111/14, EU:C:2015:267, paragraph 39), concerning Bulgarian legislation, the Court held that the inability to adjust the tax documents, where any risk of loss of tax revenue has been definitively eliminated, is not necessary in order to ensure the collection of VAT and for the prevention of fraud.

59 However, in the case which gave rise to that judgment, both the supplier and the recipient of the services at issue had paid VAT, and the tax authority therefore collected that tax twice. There was thus no risk of loss of tax revenue.

60 By contrast, that is not the case in a situation such as that at issue in the main proceedings since, as has been pointed out in paragraph 41 above, input VAT was not paid by SEM Remont and was not payable by SEM Remont.

61 In the light of all the foregoing considerations, the answer to the third question is that the VAT Directive and the principle of neutrality of VAT must be interpreted as not precluding legislation of a Member State which excludes the possibility of correcting an invoice where, first, the invoice which the supplier has provided to the recipient of a supply subject to VAT did not state that tax and, second, during a tax inspection of that supplier, the supplier drew up a report stating the VAT and putting forward the supplier as also being the recipient of that supply.

Costs

62 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 (Seventh Chamber) hereby rules:

1. **Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010,**

   must be interpreted as not precluding legislation of a Member State under which the recipient of a supply subject to value added tax (VAT) is denied the right to deduct that tax, provided for by that directive, where the supplier, first, has failed to fulfil its obligation, laid down by that legislation, to submit an application for registration for VAT purposes and issued for the recipient invoices not stating VAT, and, second, issued, during a tax inspection, a report stating that VAT and in which that supplier was put forward as also being the recipient of that supply.

2. **Directive 2006/112, as amended by Directive 2010/45, and the principle of neutrality of value added tax (VAT),**

   must be interpreted as not precluding legislation of a Member State which excludes the possibility of correcting an invoice where, first, the invoice which the supplier has provided to the recipient of a supply subject to VAT did not state that tax and, second, during a tax inspection of that supplier, the supplier drew up a report stating the VAT and putting forward the supplier as also being the recipient of that supply.

[Signatures]