Defendant: Finanzamt Dachau

Questions referred

1. Are the requirements as to the certainty that a supply will take place, as a condition of the deduction of input tax on a payment on account within the meaning of the judgment of the Court of Justice of the European Union in Case C-107/13 *Firin*, ([1]) to be determined purely objectively or from the point of view of the person having made the payment on account in the light of the circumstances apparent to him?

2. Are the Member States, taking into account the fact that the chargeability of tax and the right of deduction arise at the same time, in accordance with Article 167 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([2]) and the regulatory powers which they enjoy under Article 185(2) and Article 186 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, entitled to make the adjustment of both tax and the deduction of input tax subject to a refund of the payment on account?

3. Must the tax office responsible for a person who has made a payment on account refund the value added tax to that person where the latter cannot recover the payment on account from the recipient of that payment? If so, must this take place as part of the tax assessment procedure or is a separate equitable procedure sufficient for this purpose?

([1]) ECLI:EU:C:2014:151.
([2]) OJ L 347, p. 1.

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 21 December 2016 — Erich Wirtl v Finanzamt Göppingen

(Case C-661/16)

(2017/C 086/16)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Erich Wirtl

Defendant: Finanzamt Göppingen

Questions referred

1. In accordance with the judgment of the Court of Justice of 13 March 2014, *Firin*, (C-107/13, ([1])), is the deduction of input tax on a payment on account excluded where the occurrence of the chargeable event is uncertain at the time when the payment on account is made. Is that exclusion determined by reference to the objective situation or by reference to the point of view of the person having made the payment on account in the light of the circumstances objectively apparent to him?

2. Is the judgment of the Court of Justice in *Firin* to be interpreted as meaning that, under EU law, an adjustment of the deduction, by a person having made a payment on account for a supply of goods, of the input tax indicated on the invoice issued to that person for that payment is not conditional upon the refund of the payment on account which has been made, where that supply does not ultimately take place?

3. In the event that the foregoing question is answered in the affirmative, does Article 186 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT Directive), ([2]) which allows the Member States to lay down the detailed rules for the adjustment provided for in Article 185 of the VAT Directive, authorise the Federal Republic of Germany, as a Member State, to provide in its national law that the taxable amount may be reduced only if the payment on account is refunded, and that the VAT debt and the deduction of input tax are, accordingly, to be adjusted at the same time and under the same conditions?

([1]) ECLI:EU:C:2014:151.
([2]) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 29 December 2016 — Imofloresmira — Investimentos Imobiliários S.A. v Autoridade Tributária e Aduaneira

(Case C-672/16)

(2017/C 086/17)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Imofloresmira — Investimentos Imobiliários S.A.

Defendant: Autoridade Tributária e Aduaneira

Questions referred

(1) When a property, despite being unoccupied for the period of two or more years, is being marketed, that is it is available on the market to be let or for the provision of 'office centre' services, and it is established that the owner intends to let the property subject to VAT and has made the necessary efforts to give effect to that intention, is the characterisation as a '*failure actually to use the property for the purposes of the business*' and/or '*failure actually to use the property in taxed transactions*' — for the purposes of Article 26(1) of the VAT Code and Article 10(1)(b) of the Regime for the Waiver of the VAT exemption in Transactions relating to Immovable Property, introduced by Decree-Law No 21 of 29 January 2007, in their earlier versions — and therefore adopting the view that the deduction initially made must be adjusted, since it is above the amount to which the taxable person was entitled, compatible with Articles 167, 168, 184, 185 and 187 of Council Directive 2006/112/EC ([1]) of 28 November 2006?

(2) If the answer is in the affirmative, may that adjustment, having regard to the correct interpretation of Articles 137, 167, 168, 184, 185 and 187 of … Directive 2006/112/EC …, be imposed only once for the entirety of the period yet to expire — as laid down in the Portuguese legislation, in Article 10(1)(b) and (c) of the Regime for the Waiver of the VAT exemption in Transactions relating to Immovable Property, introduced by Decree-Law No 21 of 29 January 2007, in its earlier version — where the property has been unoccupied for more than two years, but still marketed to be let (with the possibility of waiver) and/or for the provision of services (taxable), with the aim of assigning the property in subsequent years to taxed activities which confer the right to deduct?