Reports of Cases

OPINION OF ADVOCATE GENERAL
WAHL
delivered on 23 November 2017 [1]

Case C-566/16

Dávid Vámos
v
Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Request for a preliminary ruling from the Nyíregyházi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Nyíregyháza, Hungary))

(Taxation — Common system of value added tax — Directive 2006/112/EC — Articles 281 to 294 — Special schemes for small enterprises — Exemption scheme — Obligation to opt for the application of the special scheme when declaring the commencement of taxable activities — No declaration of the commencement of taxable activities — Retroactive application of the scheme)

1. In the matter under consideration, the Nyíregyházi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Nyíregyháza, Hungary) asks the Court whether EU law precludes national legislation prohibiting the retroactive application of a special tax scheme granting an exemption to small enterprises — adopted pursuant to the provisions of Title XII, Chapter 1, Section 2, of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive') [2] — to a taxable person who fulfilled all the material conditions but did not declare the commencement of his activities to the tax authorities at the appropriate time, and did not opt for the application of that scheme.

I. Legal framework

A. EU law

2. According to Article 9(1) of the VAT Directive, '"taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity'.

3. Article 213(1), first subparagraph, of the VAT Directive provides:

'Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

…'

1 Original language: English.

2 OJ 2006 L 347, p. 1.

4. In accordance with Article 282 of the VAT Directive:

‘The exemptions and graduated tax relief provided for in this Section shall apply to the supply of goods and services by small enterprises.’

5. Article 287 of the VAT Directive provides:

‘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:

…

(12) Hungary: EUR 35 000;

…’

6. Article 289 of the VAT Directive states:

‘Taxable persons exempt from VAT shall not be entitled to deduct VAT in accordance with Articles 167 to 171 and Articles 173 to 177, and may not show the VAT on their invoices.’

7. Under Article 290 of that directive:

‘Taxable persons who are entitled to exemption from VAT may opt either for the normal VAT arrangements or for the simplified procedures provided for in Article 281. In this case, they shall be entitled to any graduated tax relief provided for under national legislation.’

B. Hungarian law

1. Law CXXVII of 2007 on value added tax

8. Paragraph 2(a) of the Az általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law CXXVII of 2007 on value added tax; ‘the VAT Law’) states:

‘In accordance with the present Law, the following shall be subject to [VAT]:

(a) the supply of goods or services for consideration in the national territory by a taxable person acting as such …’

9. Paragraph 187 of the VAT Law states:

‘(1) A taxable person who is established in the national territory for an economic purpose, or who is not so established but whose address or place of habitual residence is in the national territory, has a right to opt for the personal exemption in accordance with the provisions of this Chapter.

(2) In the event that the taxable person exercises the right to opt for an exemption referred to in subparagraph 1, during the period of the personal exemption and in his capacity as an exempt person,

(a) he shall not be subject to payment of the tax:

(b) he shall not be authorised to deduct input tax;

(c) he may only issue an invoice in which the amount of the tax charged and the rate laid down in Paragraph 83 do not appear.'

10. Under paragraph 188(1) of the VAT Law:

'The personal exemption may be opted for if the amount of the consideration paid or owed in respect of all the supplies of goods or services by the taxable person in accordance with Paragraph 2(a), expressed in Hungarian forints and accumulated annually, does not exceed the upper limit laid down in subparagraph 2

(a) neither actually in the calendar year preceding the reference calendar year,

(b) neither actually nor reasonably foreseeably in the reference calendar year.'

11. Paragraph 188(2) of the same law, in the version applicable until 31 December 2012, stated that the maximum threshold below which there is a right to opt for the personal exemption is Hungarian forints (HUF) 5 000 000. From 1 January 2013, the threshold was raised to HUF 6 000 000.

2. Law XCII of 2003 on General Taxation

12. Paragraph 16 of the Az adózás rendjéről szóló 2003. évi XCII. Törvény (Law XCII of 2003 on General Taxation; 'the Law on General Taxation') reads:

'(1) Only a taxable person who has been issued with a tax identification number may pursue a taxable activity, without prejudice to the provisions of Paragraphs 20 and 21.

(2) A taxable person who wishes to pursue a taxable activity must be registered with the State tax authority in order to be allocated a tax identification number ["TIN"].'

13. Paragraph 17(1)(a) of the Law on General Taxation states that 'if a taxable person's tax liability or taxable activity corresponds to that of a sole trader by virtue of the Law governing the activities of sole traders, that person must apply for a TIN by registering with the authority responsible for matters relating to the activities of sole traders (submitting a duly completed registration form), and in that way he will comply with the obligation to register with the State tax authority'.

14. Pursuant to Paragraph 22(1)(c) of that law:

'The person liable to value added tax shall indicate at the time of stating when his taxable activity commences that he opts for the personal exemption.'

15. According to Paragraph 172(1)(c) of that law:

'Except as provided for in subparagraph 2, a fine of up to HUF 200 000 may be imposed in the case of individuals, and of up to HUF 500 000 in the case of other taxable persons, if they fail to comply with the obligation to register (initial registration and communication of any changes), provide data or open a current account, or with the obligation to submit tax returns.'

II. Facts, procedure and the questions referred

16. From 2007 until 22 January 2014, Mr Dávid Vámos made 778 sales of electronic items on two online platforms. He did not register as a taxable person and did not declare the income from these sales.

17. The Hungarian tax authority carried out an inspection in respect of Mr Vámos. In the administrative procedure, that authority found that Mr Vámos had not complied with the obligation to register laid down in the domestic legislation, as a result of which it imposed on him a financial penalty. The tax authority also found that Mr Vámos had pursued his activity without authorisation, without a tax identification number, without being a member of a company and without issuing supporting documents, receipts or sales invoices.

18. On 22 January 2014, Mr Vámos registered as a person liable to value added tax, and opted for the 'personal exemption', a Hungarian tax exemption scheme for small enterprises set out in Paragraph 187 and following of the VAT Law, enacted by the Hungarian authorities in application of Articles 281 to 292 of the VAT Directive. After that date, Mr Vámos conducted business as a sole trader and was, at the same time, employed by another undertaking for over 36 hours per week.

19. Independently of the first set of proceedings that led to the imposition of the financial penalty, the tax authority initiated a second set of proceedings with regard to Mr Vámos' tax returns for the years 2012 to 2014. As a result of that investigation, the tax authority found a VAT debt (in addition to debts relating to income tax and social security contributions) for the period between the first quarter of 2012 and the first quarter of 2014, and imposed on Mr Vámos financial penalties and interest for late payment.

20. Upon an administrative appeal, the Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Administration, Hungary) concluded that Mr Vámos had been engaged in the commercial sale of goods on a permanent and regular basis, which constituted an economic activity, and that he was subject to VAT. As far as the personal exemption is concerned, the tax authority took the view that national law did not allow taxable persons to opt for that exemption retroactively. It thus found that, since Mr Vámos had not registered with the tax authority until 22 January 2014, he was not entitled to opt for the personal exemption for the period before that date.

21. Mr Vámos challenged that decision before the Nyíregyházi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Nyíregyháza) arguing that the tax authority should have asked him whether he wished to opt for the application of the personal exemption to the sales he made before registering as a taxable person, given that he complied with the material conditions to benefit from the scheme.

22. Entertaining doubts as to the interpretation of the relevant provisions of the VAT Directive, the referring court decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is national legislation pursuant to which the tax authority may, when carrying out an *ex post* tax inspection, preclude the possibility of opting for the personal exemption, on the basis that the taxable person only has that possibility at the time of stating when his taxable activity commences, contrary to EU law?'

23. Written observations have been submitted by the Hungarian Government and the Commission. In accordance with Article 76(2) of the Rules of Procedure of the Court of Justice, no hearing was held.

III. Analysis

24. From the outset, it should be borne in mind that Title XII, Chapter 1, of the VAT Directive allows Member States to introduce (or retain) three types of special schemes for small enterprises: (i) simplified procedures for charging and collecting VAT (Article 281 of the directive); (ii) exemptions (Articles 282 to 290 of the directive); and (iii) graduated relief (Articles 282 to 285, and 291 of the directive).

25. The present case concerns a special scheme, enacted by the Hungarian authorities, which grants an exemption to enterprises not exceeding a certain turnover threshold ('the exemption scheme'). The referring court asks, in essence, whether the VAT Directive precludes national legislation that makes it impossible for a taxable person to request a retroactive application of the exemption scheme when the taxable person fulfilled all the material requirements for it, but did not declare the commencement of his activities at the appropriate time and did not explicitly opt for the application of that scheme.

26. To answer that question, it is necessary to determine whether Member States may, when they decide to establish an exemption scheme for small enterprises in accordance with the provisions of Title XII, Chapter 1, Section 2, of the VAT Directive, make the application of such a scheme subject to the condition that the taxable person has duly declared the commencement of his activities and expressly opted for the application of that scheme.

27. For the reasons that will be illustrated in the following, I believe that that question should be answered in the affirmative.

A. The obligation to register

28. According to Article 272(1)(d) of the VAT Directive, Member States are free to release taxable persons covered by an exemption scheme for small enterprises from certain or all obligations referred to in Chapters 2 to 6 of Title XI of the VAT Directive. Among those obligations is, notably, that of stating the commencement of activity as a taxable person provided for in Article 213 of the VAT Directive. The Hungarian authorities, however, decided not to do so, and that choice has been held to be lawful by the Court in *Balogh*.[3]

29. In that case — which concerned the same Hungarian tax exemption scheme and was referred by the same court as in the present case — the Court found that the VAT Directive does not preclude national legislation requiring a taxable person to declare when he commences his economic activity, even if his annual turnover does not exceed the threshold of the exemption scheme for small enterprises. The Court added that Member States may also impose an administrative fine penalising the failure by a taxable person to comply with that obligation, provided that the fine is proportionate.[4]

30. It is thus clear that, in the case at hand, the requirement under Hungarian law for Mr Vámos to declare the commencement of his activities to the domestic tax authorities is lawful under EU law. For his failure to do so, the tax authority was, therefore, entitled to impose a financial penalty on him.

31. Against that background, the next issue to examine is whether there are provisions of EU law that preclude Member States from (i) requiring taxable persons who have declared the commencement of activities to also choose, in that context, the tax regime they wish to enjoy, among those that may be available to them, and (ii) deciding that any choice in that regard may produce effects for the future only.

3 Order of 30 September 2015, *Balogh*, C-424/14, not published, EU:C:2015:708.

4 Order of 30 September 2015, *Balogh*, C-424/14, not published, EU:C:2015:708, paragraphs 29, and 33 to 36.

B. The special schemes for small enterprises

32. In the first place, the wording of Articles 281, 284, 285, 286 and 287 of the VAT Directive states that Member States *may*, but are not obliged to, establish any of the special tax schemes provided therein. That is confirmed by recital 49 of the directive, according to which Member States 'should be allowed to continue to apply their special schemes for small enterprises'.

33. That recital also makes clear that those schemes are to be applied 'in accordance with the common provisions and with a view to closer harmonisation'. Consequently, the special schemes for small enterprises constitute, for the time being,[5] a matter not fully harmonised at the EU level[6] and in which Member States necessarily benefit from some leeway, provided that their national rules comply with the relevant provisions of EU law. In particular, the VAT Directive contains only a limited number of provisions governing the manner in which those schemes are to be designed and operated, thereby leaving broad discretion to the Member States.

34. None of those provisions can, in my view, be read as *explicitly* granting small enterprises an unfettered right to enjoy the application of an exemption scheme. In particular, there is no textual basis in the VAT Directive for the view that a taxable person should have the right to enjoy such a scheme *retroactively*, in the absence of an express choice on its part. For that reason, the decision of the Hungarian authorities to set up such a scheme but to subject its application to certain procedural requirements falls, in my view, within the discretion that the VAT Directive leaves to the Member States.

35. That conclusion is, therefore, in conformity with the division of competences set out in Title XII, Chapter 1, of the VAT Directive as regards special schemes for small enterprises.

36. In the second place, I am not persuaded by the arguments put forward by the Commission that an unfettered right to enjoy an exemption scheme (including, if need be, retroactively) derives *implicitly* from a systemic interpretation of other provisions of the VAT Directive and/or stems from the principles of fiscal neutrality and proportionality. It seems to me that the provisions and principles referred to by the Commission, especially when interpreted in the light of existing case-law, rather support the opposite view.

C. Article 290 of the VAT Directive

37. As both the Commission and the Hungarian Government pointed out, it stems from Article 290 of the VAT Directive that, if a Member State enacts an exemption scheme for small enterprises, the application of that scheme to the taxable persons entitled to participate is *optional*, not compulsory. Indeed, the taxable persons may also choose to be subject to the normal VAT regime, or to the special scheme provided for in Article 281 (should any such scheme exist in the relevant Member State). If the latter scheme is chosen, and the relevant conditions are satisfied, the taxable person may also benefit from the graduated tax relief (again, should any such relief exist in the Member State concerned). Therefore, by virtue of Article 290 of the VAT Directive, small enterprises may have — depending on the relevant national legislation — up to three different VAT regimes for which they can opt.

5 Article 293 of the VAT Directive refers to 'the need to ensure the long-term convergence of national regulations' on special schemes for small enterprises and Article 294 of the same directive allows the Council to decide 'whether a special scheme for small enterprises is necessary under the definitive arrangements' and, if appropriate, to 'lay down the common limits and conditions for the implementation of that scheme'.

6 That is further confirmed by recital 7 of the VAT Directive which reads: 'The common system of VAT should, *even if* rates and *exemptions are not fully harmonised*, result in neutrality in competition, such that within the territory of each Member State similar goods and services bear the same tax burden, whatever the length of the production and distribution chain' (emphasis added).

38. As the Commission acknowledges, none of the three regimes is, as a matter of principle, preferable or more convenient for all taxable persons. Indeed, whether one or the other is more suitable or financially sound for a taxable person depends on many variables, and especially on how he has organised and operates his economic activity.

39. More particularly, since the application of the exemption scheme deprives, pursuant to Article 289 of the VAT Directive, taxable persons of the possibility of deducting VAT, it cannot be presumed that, failing any express choice on their part, all taxable persons entitled to the exemption intend to opt for it. For example, small enterprises that, to start their business, need to make substantial investments may well prefer to have the ordinary regime applied in order to be able to deduct the significant input VAT paid. There is, in other words, no basis to consider that, when an exemption scheme for small enterprises exists, the application of that scheme to the taxable persons fulfilling the requirements is or should be automatic.

40. Since the special schemes for small enterprises constitute an (optional) exception to the ordinary regime, I see no reason why a Member State should not be allowed to consider that, in the absence of a choice expressed by the taxable person, the applicable regime should be the normal VAT arrangements.

41. In that regard, the Hungarian Government explains that there are specific reasons why it requires small enterprises to make an express and *ex ante* choice of the tax regime they wish to have applied. In particular, it points out that the choice of a specific regime has a number of consequences for both the tax administration and the taxable person. There might, in particular, be different procedural obligations for the taxable person (for example, concerning invoicing, accounting or reporting), and the tax authority might also have to follow different procedures when applying, and ensuring compliance with, the VAT rules (for example, for charging and collecting VAT due).

42. A retroactive application of a tax regime choice might, furthermore, have certain consequences for the traders that have made transactions with the taxable person in question. For instance, taxable persons who benefit from the exemption do not generally pay VAT and thus need not pass VAT on to their customers. Conversely, taxable persons subject to the normal regime (or to the simplified procedures and tax relief regime) must pay VAT, and that tax is thus to appear on their invoices. In the latter case, unlike in the former, the customers of the taxable person may deduct that VAT. A retroactive application of a tax regime different from that initially applied may thus lead to uncertainty regarding the VAT status of those transactions.

43. In the light of the above, the arguments put forward by the Hungarian Government — relating especially to good administration and legal certainty — to explain why the tax authority requires taxable persons to make an express and *ex ante* choice of the VAT regime they wish to have applied seem to me reasonable.

D. The principle of fiscal neutrality

44. The Commission, however, also argues that the national legislation at issue is contrary to the principle of fiscal neutrality. It refers to the Opinion of Advocate General Saugmandsgaard Øe in *Plöckl*,[7] in which he infers from the principle of fiscal neutrality a principle of EU VAT law which he calls 'the principle of rejection of formalism'. According to the Commission, the principle of rejection of formalism implies that a taxable person who does not fulfil the formal requirements of an exemption scheme cannot, for that reason alone, be deprived of his right to enjoy the scheme.

7 C-24/15, EU:C:2016:204.

45. In that regard, I observe that, in his Opinion, Advocate General Saugmandsgaard Øe inferred the existence of such a principle from several cases in which the Court held, for example, that the right to deduction [8] or exemption of VAT in case of intra-EU supplies [9] should not be denied for the simple reason that, despite observance of the substantive requirements, the taxable person has failed to meet certain formal requirements. [10]

46. However, regardless of the existence and scope of such a principle, it is in my view clear that the situation at hand is fundamentally different from the types of cases examined by Advocate General Saugmandsgaard Øe. Both the right to deduction [11] and the right to exemption in case of intra-EU supply [12] are rights which a taxable person derives directly from EU law and are simply implemented by national legislation. Conversely, as explained, the enactment of an exemption scheme for small enterprises is merely an option open to Member States, which also enjoy, within the limits referred to above, broad discretion concerning their design and operation.

47. In the cases where the Court rejected a formalistic approach, the aim was to ensure that, despite a minor procedural error committed by the taxable person, transactions would still be taxed according to their objective characteristics. [13] Member States cannot penalise a failure to adhere strictly to formal requirements in a manner which risks undermining the neutrality of the system, for example treating competing undertakings differently, or rendering ineffective key provisions of the VAT Directive.

48. Yet, that logic is not applicable in the case at hand. First, it is doubtful that the failure to comply with the obligation to declare the commencement of activities, provided for in Article 213(1) of the VAT Directive, can always be regarded as a minor procedural error: that obligation may be important to ensure the correct levying and collection of the tax and to prevent fraud. [14] It is certainly a *formal* requirement, but, as one might say, it is a not a *formalistic* requirement.

49. In addition, the failure to declare the commencement of activity and expressly opt for one specific tax regime does not lead to any transaction being taxed in disregard of its objective characteristics. Indeed, the transactions concluded by a taxable person such as Mr Vámos in the past are merely taxed according to one tax regime instead of another, both regimes being possible and lawful.

50. Furthermore, it seems to me that the national legislation at issue is in line with the principle of fiscal neutrality viewed as a reflection, in matters relating to VAT, of the principle of equal treatment. [15] That principle precludes treating similar goods, which are in competition with each other, differently for VAT purposes, [16] thereby distorting competition. [17]

8 Judgments of 1 April 2004, *Bockemühl*, C-90/02, EU:C:2004:206, paragraphs 49 to 52, and of 9 July 2015, *Salomie and Oltean*, C-183/14, EU:C:2015:454, paragraphs 58 to 61. See also Opinion of Advocate General Saugmandsgaard Øe in *Plöckl*, C-24/15, EU:C:2016:204, footnote 20.

9 Judgments of 27 September 2007, *Collée*, C-146/05, EU:C:2007:549, paragraphs 29 to 31, and of 9 October 2014, *Traum*, C-492/13, EU:C:2014:2267, paragraphs 35, 36 and 43. See also Opinion of Advocate General Saugmandsgaard Øe in *Plöckl*, C-24/15, EU:C:2016:204, footnote 21.

10 Opinion of Advocate General Saugmandsgaard Øe in *Plöckl*, C-24/15, EU:C:2016:204, point 87.

11 Article 167 of the VAT Directive.

12 Article 3 of the VAT Directive.

13 See, to that effect, judgment of 20 October 2016, *Plöckl*, C-24/15, EU:C:2016:791, paragraph 37.

14 See, to that effect, judgment of 19 July 2012, *Rēdlihs*, C-263/11, EU:C:2012:497, paragraph 45.

15 Judgment of 10 April 2008, *Marks & Spencer*, C-309/06, EU:C:2008:211, paragraph 49.

16 Judgment of 10 April 2008, *Marks & Spencer*, C-309/06, EU:C:2008:211, paragraph 47.

17 See recital 7 of the VAT Directive and, to that effect, judgment of 10 November 2011, *Rank Group*, C-259/10 and C-260/10, EU:C:2011:719, paragraph 35.

51. In the present case, it appears that allowing taxable persons who failed to declare the commencement of their activities to opt retroactively for the tax exemption scheme may give them an unfair advantage, distorting competition in their favour. When a taxable person registers and opts for the application of a specific tax regime, he necessarily bases his choice on predictions about his future business. Conversely, a taxable person who never registers and who makes his choice only later — for example if and when he is subject to controls by the tax authorities — is able to choose the regime that, with the benefit of hindsight, appears to be the most advantageous for him.

52. The result is paradoxical: the taxable person who makes the procedural error may actually profit from that error, and thus be in a better position than competing traders who, instead, duly complied with all procedural obligations laid down in the relevant national laws.

53. Such an advantage might, in turn, encourage undertakings to breach the law by not declaring the commencement of activities, therefore making tax evasion more likely. In that regard, it suffices to point out that pursuant to Article 273 of the VAT Directive, 'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons …'.

54. For that reason, the argument put forward by the Hungarian Government that the prohibition to apply retroactively a regime such as the tax exemption scheme is not only consistent with the principle of fiscal neutrality, but also intended to prevent tax evasion and fraud, seems plausible to me.

E. The principle of proportionality

55. Finally, the Commission argues that obliging an undertaking to pay VAT on the sales made before the declaration of the commencement of activities, in addition to the administrative fine, renders the penalty for the failure to declare the commencement of activities excessive, thereby infringing the principle of proportionality.

56. As explained above, in *Balogh* [18] the Court held that an administrative fine can be imposed in order to penalise a failure to declare commencement of activities, as long as it is proportionate. It is for the national court to assess whether such a fine is proportionate. [19]

57. In that regard, it suffices to state that the recovery of the VAT cannot, in principle, be taken into account in the proportionality assessment of the penalty by the national court. Indeed, the requirement to pay VAT for past sales, which are subject to VAT but for which VAT has not been paid, is not a penalty, but merely the recovery of unpaid taxes.

58. From the moment that Mr Vámos began exercising an economic activity within the meaning of Article 9 of the VAT Directive, he became a taxable person and, as a consequence, the obligations provided for in the applicable VAT rules applied to him. Among those obligations — it is hardly necessary to point out — is the obligation to pay the VAT that is due. [20]

18 Order of 30 September 2015, *Balogh*, C-424/14, not published, EU:C:2015:708.

19 See *supra* point 29.

20 Articles 193 to 212 of the VAT Directive.

59. It may be helpful to state once again that the fact that, in the absence of explicit choice, the ordinary regime applied to Mr Vámos is by no means unlawful or exceptional. It is, indeed, one of the tax regimes that could be applied to him, and the one that was set as *default* regime in the national legislation. Mr Vámos deprived himself of the possibility of choosing the exemption scheme for certain years by neglecting to declare in due course the commencement of his activity and his wish to have that exemption scheme applied.

60. I also note, in passing, that, according to the national legislation at issue, taxable persons who are entitled to enjoy the exemption scheme may, from one fiscal year to another, opt for the application of a different regime. Therefore, small enterprises are not 'trapped' by their initial failure to declare the commencement of their activity and to expressly opt for the VAT regime of their preference. Each year they have the possibility of complying with the registration obligation and of requesting application of the exemption scheme for the future, thereby avoiding more severe consequences.

IV. Conclusion

61. In the light of the above, I propose that the Court answer the question referred for a preliminary ruling by the Nyíregyházi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Nyíregyháza, Hungary) as follows:

European Union law does not preclude national legislation prohibiting the retroactive application of a special tax scheme granting an exemption to small enterprises — adopted pursuant to the provisions of Title XII, Chapter 1, Section 2, of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax — to a taxable person who fulfilled all the material conditions but did not declare the commencement of his activities to the tax authorities in due course, and did not opt for the application of that scheme.