



Reports of Cases

Case C-392/16

Dumitru Marcu

v

Agencia Națională de Administrare Fiscală (ANAF)

and

Direcția Generală Regională a Finanțelor Publice București

(Request for a preliminary ruling from the Curtea de Apel București)

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 199(1)(c) — No VAT registration — Reverse charge — Hypothetical nature of the question referred — Inadmissibility of the question referred)

Summary — Judgment of the Court (Ninth Chamber), 6 July 2017

Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — 62734 / Request for interpretation of provisions of EU law manifestly inapplicable in the dispute in the main proceedings — Inapplicability of Article 199(1)(c) of Directive 2006/112 — Inadmissibility

(Art. 267 TFEU; Council Directive 2006/112, Arts 135(1)(j) and (k), 137(1)(b) and (c) and 199(1)(c))

The request for a preliminary ruling made by the Curtea de Apel București (Court of Appeal, Bucharest, Romania) is inadmissible.

It is only when the Member State concerned has opted to allow its taxable persons the option provided for in Article 137 of Directive 2006/112 and one of those taxable persons has exercised that option in respect of transactions covered by Article 135(1)(j) and (k) thereof that the reverse charge mechanism may be applied to those transactions on the basis of Article 199(1)(c) of that directive.

In consequence, although the transactions at issue in the main proceedings, or some of them, concern immovable property within the meaning of Article 135(1)(j) and (k) of Directive 2006/112, since Romania has not applied, in its legislation, the facility provided for in Article 137(1)(b) and (c) of that directive to allow its taxable persons the right of option for taxation of those transactions or, in the absence of an express request by Mr Marcu, in accordance with Article 137 of that directive, to have VAT applied to those transactions, the conditions for application of Article 199(1)(c) of that directive are not met and, in consequence, the reverse charge mechanism, as provided for in that directive, cannot apply.

Even if, secondly, the transactions at issue in the main proceedings relate to immovable property within the meaning of Article 12(1)(a) and (b) of Directive 2006/112, the reverse charge mechanism still cannot apply to those transactions, since they are not among the operations exhaustively referred to in Article 199(1)(a) to (g) of Directive 2006/112.

(see paras 47, 51, 52, 54, operative part)