



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

2 May 2019*

(Reference for a preliminary ruling — Harmonisation of fiscal legislation — Common system of value added tax (VAT) — Directive 2006/112/EC — Special scheme for small enterprises — Articles 282 to 292 — VAT exemption for small enterprises whose annual turnover is below the fixed threshold — Simultaneous supply of two items of immovable property in a single transaction — Annual turnover limit exceeded in view of the sale price of one of the two items of property — Obligation to pay tax on the total value of the transaction)

In Case C-265/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 11 April 2018, received at the Court on 17 April 2018, in the proceedings

Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

v

Akvilė Jarmuškienė,

intervening party:

Vilniaus apskrities valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos,

THE COURT (Tenth Chamber),

composed of C. Lycourgos, President of the Chamber, E. Juhász (Rapporteur) and I. Jarukaitis, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Lithuanian Government, by R. Krasuckaitė and V. Vasiliauskienė, acting as Agents,
- the European Commission, by L. Lozano Palacios and J. Jokubauskaitė, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: Lithuanian.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 282 to 292 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) ('the VAT Directive').
- 2 The request has been made in proceedings between the Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania) ('the State Tax Inspectorate') and Ms Akvilė Jarmuškienė concerning the refusal to exempt her from value added tax (VAT) in connection with an economic transaction involving the supply of a house and the land on which it is built.

Legal context

EU law

- 3 Recital 49 of the VAT Directive states that 'Member States should be allowed to continue to apply their special schemes for small enterprises, in accordance with common provisions, and with a view to closer harmonisation'.
- 4 Chapter 1, concerning 'supply of goods', of Title IV, entitled 'Taxable Transactions', of that directive contains Article 14. According to Article 14(1), 'supply of goods' means the transfer of the right to dispose of tangible property as owner.
- 5 Section 2, entitled 'Exemptions or graduated relief', of Chapter 1, concerning the 'special scheme for small enterprises', of Title XII, entitled 'Special Schemes', of that directive contains Articles 282 to 292.
- 6 Under Article 282, the exemptions and graduated tax relief provided for in that section are to apply to the supply of goods and services by small enterprises ('the special scheme for small enterprises').
- 7 Article 287 of the VAT Directive reads:

'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:

...

(11) Lithuania: EUR 29 000;

...'

- 8 Article 288 of that directive provides:

'The turnover serving as a reference for the purposes of applying the arrangements provided for in this Section shall consist of the following amounts, exclusive of VAT:

(1) the value of supplies of goods and services, in so far as they are taxed;

- (2) the value of transactions which are exempt, with deductibility of the VAT paid at the preceding stage, pursuant to Articles 110 or 111, Article 125(1), Article 127 or Article 128(1);
- (3) the value of transactions which are exempt pursuant to Articles 146 to 149 and Articles 151, 152 or 153;
- (4) the value of real estate transactions, financial transactions as referred to in points (b) to (g) of Article 135(1), and insurance services, unless those transactions are ancillary transactions.

However, disposals of the tangible or intangible capital assets of an enterprise shall not be taken into account for the purposes of calculating turnover.'

- 9 Under Article 1 of Council Implementing Decision 2011/335/EU of 30 May 2011 authorising the Republic of Lithuania to apply a measure derogating from Article 287 of Directive 2006/112 (OJ 2011 L 150, p. 6), 'by way of derogation from Article 287(11) of [the VAT Directive], the Republic of Lithuania is authorised to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 45 000 at the conversion rate on the day of its accession to the European Union'.

Lithuanian law

- 10 Article 4(1)(1) of the Lietuvos Respublikos pridėtinės vertės mokesčio įstatymas (Law of the Republic of Lithuania on Value Added Tax), as amended by Law No XI-1817 of 20 December 2011 ('the Law on VAT'), provides:

“Supply of goods” means:

- (1) the transfer of goods to another person where in accordance with the terms of the transaction that person or a third party acquires the right to dispose of those goods as their owner ...'

- 11 Article 71(1), (2) and (4) of that law provides:

'1. The obligation to register for VAT and calculate VAT and pay it into the budget shall be owed by taxable persons supplying goods in the territory of the country ... A person liable to register for VAT must submit an application for registration for VAT.

2. Notwithstanding paragraph 1, a taxable person of the Republic of Lithuania shall not be liable to submit an application for registration for VAT and to calculate VAT and pay it into the budget, in the manner laid down in this Law, for goods supplied ... and/or services provided, where the total annual amount of consideration within the last 12 months for goods supplied and/or services provided in the territory of the country while carrying out economic activities has not exceeded LTL 155 000. VAT shall be begun to be calculated from the month when that limit has been exceeded. No VAT shall be calculated in respect of the goods supplied and services provided the consideration for which did not exceed the specified amount of LTL 155 000. ...

...

4. Failure to submit an application for registration for VAT shall not exempt a taxable person from the obligation to calculate VAT in respect of the goods supplied and/or services provided by him.'

12 Article 92(1) of that law provides:

‘A taxable person who was obliged to submit an application for registration for VAT in accordance with Article 71 of this Law ... but failed to do so must, observing the procedure laid down in this article, calculate, and pay into the budget, VAT on the goods and services in respect of which, in accordance with the provisions of this Law, he would be obliged to calculate and pay VAT as a VAT payer. The amount of VAT payable on the goods supplied and/or services provided shall be calculated in accordance with the following formula (... for goods supplied and services provided in respect of which the consideration did not exceed the amount of LTL 155 000 specified in Article 71(2) of this Law, VAT shall not be calculated, but where the specified limit has been exceeded, VAT must be calculated on all the goods supplied and/or services provided in respect of whose supply the specified limit was exceeded):

the amount of VAT payable shall be equal to: $\text{consideration} * R / (100\% + R)$,

where R means the VAT rate (%) established in this Law for those goods and/or services; and * is a multiplication sign.’

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

- 13 By a contract of sale of 10 February 2011, Ms Jarmuškienė acquired, as co-owner with another natural person, a plot of agricultural land. On 4 July 2011 she obtained permission to build on that property. A dwelling house and two buildings for rural tourism were accordingly erected subsequently on the plot of land acquired.
- 14 On 28 December 2012, Ms Jarmuškienė and the co-owner sold the dwelling house together with part of the land for the sum of LTL 450 000 (approximately EUR 130 329) (‘the transaction in question’). Of that sale price, Ms Jarmuškienė received LTL 112 500 (approximately EUR 32 437) in respect of part of the land and LTL 150 000 (approximately EUR 43 443) in respect of part of the dwelling house erected on that land.
- 15 Following a VAT inspection for the period 2012-2013, the local tax authority found, in its decision of 23 October 2015, that the transaction in question had not been an isolated, one-off event, but that Ms Jarmuškienė was carrying on an economic activity, within the meaning of the Law on VAT. According to that tax authority, she should therefore have declared, as a VAT output, the sum of LTL 45 558 (approximately EUR 13 195), calculated on the total amount she had received from the transaction in question, namely LTL 262 500 (approximately EUR 76 025). However, since the input VAT in respect of the work of constructing the dwelling house was LTL 21 000 (approximately EUR 6 082), the local tax authority held that Ms Jarmuškienė should have deducted that amount from the abovementioned sum of LTL 45 558 (approximately EUR 13 195), so she remained liable for a sum of LTL 24 558 (EUR 7 112) in respect of the output VAT due in connection with the transaction in question. Taking the existence of a separate subsequent supply into account, the local tax authority decided finally that Ms Jarmuškienė was required to pay, in respect of the period 2012-2013, a sum of EUR 21 915.55 in VAT, plus EUR 5 034 in interest on account of late payment, together with a fine of EUR 2 192.
- 16 Ms Jarmuškienė lodged a complaint against that decision to the State Tax Inspectorate, which, by decision of 2 February 2016, upheld the amounts of VAT imposed by the local tax authority.
- 17 Ms Jarmuškienė then referred the matter to the Mokestinių ginčų komisija (Tax Disputes Commission, Lithuania) (‘the TDC’), which, by decision of 9 May 2016, annulled the State Tax Inspectorate’s decision of 2 February 2016 and referred the case back to the latter for reconsideration. In support of its decision, the TDC stated that, in the transaction in question, Ms Jarmuškienė had sold two separate

items of property, namely a part of the land and a part of the dwelling house, and that the local tax authority was therefore wrong to hold that the sale of the items of immovable property in the course of that transaction constituted a single supply of goods. According to the TDC, at the material time only supplies of goods whose price led to the ceiling laid down in the Law on VAT being exceeded were subject to VAT. In the case in point, only one of the sales of property that were the subject of the transaction in question led to that ceiling being exceeded.

- 18 The State Tax Inspectorate lodged a judicial appeal against the TDC's decision of 9 May 2016, claiming that, by the transaction in question, Ms Jarmuškienė had carried out a single supply of goods, since the items of property in question could not be supplied separately, were intrinsically linked and constituted an entity from an economic point of view.
- 19 After the first-instance court dismissed that appeal, the State Tax Inspectorate further appealed on a point of law to the referring court, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania).
- 20 The latter court states that, in order to resolve the case before it, it needs to know how the scheme for small enterprises, provided for in Articles 282 to 292 of the VAT Directive, should be interpreted in circumstances such as those at issue in that case, where two items of property are counted as one supply in a single transaction, but where the annual turnover limit, laid down in Article 287 of that directive is exceeded only by reason of the supply of one of them.
- 21 First, the referring court states that it would be logical to consider that taxable persons covered by that special scheme for small enterprises would be required to pay VAT only once the amounts provided for in Article 287 of the VAT Directive were exceeded. It points out that, under Lithuanian law, it is possible for a built property to be supplied without the right of ownership over the plot of land on which the building stands being transferred and that, in the case in point, the two items of immovable property were identified separately in the contract, each with its own sale price. Furthermore, according to that court, not allowing Ms Jarmuškienė to be exempt from VAT in respect of one of the items of property that were the subject of the transaction in question would result in unfair treatment as compared to another taxable person who had achieved the same end, but through two separate transactions, and would only exceed the annual limit by reason of subsequent transactions. It further states that the judgment of 8 June 2000, *Breitsohl* (C-400/98, EU:C:2000:304), cannot in its view be transposed to the present case.
- 22 Second, the referring court points out that, since the provisions of the special scheme for small enterprises derogate from the general scheme provided for by the VAT Directive, they must be interpreted strictly. It also states that, according to the wording of Article 288(1) of that directive, 'the value of supplies of goods' constituting the turnover, mentioned in Article 287 of that directive, refers specifically to the total value of the supply concerned, irrespective of the number of goods comprising that supply. Referring to paragraph 70 of the judgment of 26 October 2010, *Schmelz* (C-97/09, EU:C:2010:632), that court holds that such an approach is in accordance with the objective of that special scheme, which is designed to encourage only small enterprises. It notes in addition that the taxable person should be aware, before conducting a transaction in respect of a number of goods or properties, whether that composite transaction will be covered by the VAT exemption applicable to small enterprises.
- 23 It was in those circumstances that the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Articles 282 to 292 of [the VAT Directive] be interpreted as meaning that in circumstances, such as those in the present case, where two goods are supplied by means of the same transaction but the annual turnover limit (the volume of activity) laid down in Article 287 of [the VAT Directive] (and in

the corresponding provision of national legislation) is exceeded only on account of the supply of one of those goods, the taxable person (the supplier) is obliged, inter alia, to calculate and pay VAT (1) on the entire value of the transaction (on the value of the supply of both goods) or (2) only on the part of the transaction whereby the aforesaid limit (volume of activity) is exceeded (on the value of the supply of one of the goods)?'

Consideration of the question referred

- 24 By its question, the referring court asks, in essence, whether Articles 282 to 292 of the VAT Directive must be interpreted as meaning that, where a supply, to the same purchaser, comprises two items of immovable property, linked by their nature and coming under a single contract of sale, and the annual turnover limit serving as a reference for the purposes of applying the special scheme for small enterprises provided for by that directive is exceeded, the taxable person is required to pay tax on the basis of the value of the entire supply in question, that is to say, taking into account the value of both the items of property being supplied, even where taking into account the value of one of those items would not lead to that annual limit being exceeded.
- 25 In that regard, it should be noted that Articles 282 to 292 of the VAT Directive make provision for Member States to be able to exempt small enterprises from payment of VAT.
- 26 Under Article 287 of that directive, 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 respective amounts indicated for the Member States listed in that article. According to Implementing Decision 2011/335, the Republic of Lithuania, which introduced the Euro after that decision entered into force, is authorised, by way of derogation from Article 287(11) of the VAT Directive, 'to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 45 000 at the conversion rate on the day of its accession to the European Union'. That turnover is calculated by applying Article 288 of the directive.
- 27 According to the case-law of the Court, as an exception to the common system applicable under the VAT Directive, the special scheme for small enterprises must be applied only to the extent necessary to achieve its objective and is to be interpreted strictly (see, to that effect, judgment of 28 September 2006, *Commission v Austria*, C-128/05, EU:C:2006:612, paragraph 22).
- 28 In the present case, it is not disputed that, in making the sale at issue in the main proceedings, the taxable person exceeded the ceiling above which it is no longer possible for small enterprises to be exempt from VAT. The referring court raises the question, however, of whether the value of only one of the components of the transaction that led to that ceiling being exceeded is to be subject to VAT.
- 29 Since that is the only question that is at issue in the main proceedings, the Court is not required in the case before it rule on the question of whether, once the ceiling laid down in Article 287 of the VAT Directive has been exceeded, a taxable person must submit for VAT all of the transactions he has carried out, including all transactions prior to the one whose value has led to that ceiling being exceeded.
- 30 It is clear from the order for reference that the sale of the part of the dwelling house and the land on which it stands, at issue in the main proceedings, was made to the same purchaser under a single contract. It is also clear from it that the consideration received for the supply of those items of immovable property was an overall sum.
- 31 It is true that in the present case the contract of sale indicated the price of the house separately from that of the land. However, those items of property are closely linked both by their nature and by their respective prices, which were determined jointly.

- 32 In that regard, it should be noted that, according to Article 14(1) of the VAT Directive, ‘supply of goods’ means the transfer of the right to dispose of tangible property as owner.
- 33 In the main proceedings, the transfer of the right to dispose of the items of immovable property as a whole was carried out by means of the same legal act.
- 34 There is only a single supply, for the purposes of Article 14(1) of the VAT Directive, in the present case even though it relates to two items of property.
- 35 The components of that single supply cannot be split, since that would be artificial in the light of the VAT system (see, by analogy, judgment of 18 January 2018, *Stadion Amsterdam*, C-463/16, EU:C:2018:22, paragraph 22).
- 36 Therefore, VAT is payable on the entire amount of the transaction at issue.
- 37 This conclusion is borne out by the objective of the special scheme for small enterprises. The latter provides for administrative simplifications intended to support the creation, activities and competitiveness of small undertakings, and to retain a reasonable relationship between the administrative charges connected with fiscal supervision and the small amounts of tax to be reckoned with. Thus, that scheme is aimed at sparing small undertakings and the tax authorities from such an administrative burden (see, to that effect, judgment of 26 October 2010, *Schmelz*, C-97/09, EU:C:2010:632, paragraphs 63 and 68).
- 38 It should be noted that the administrative burden on the tax authority concerned and on the taxable person would not be reduced if it were necessary to carry out separate calculations relating to the various goods in a single supply, covered by the same contract of sale.
- 39 Having regard to the foregoing, the answer to the question referred is that Articles 282 to 292 of the VAT Directive must be interpreted as meaning that, where a supply, to the same purchaser, comprises two items of immovable property, linked by their nature and coming under a single contract of sale, and the annual turnover limit serving as a reference for the purposes of applying the special scheme for small enterprises provided for by that directive is exceeded, the taxable person is required to pay tax on the basis of the value of the entire supply in question, that is to say, taking into account the value of both the items of property being supplied, even where taking into account the value of one of those items would not lead to that annual limit being exceeded.

Costs

- 40 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 (Tenth Chamber) hereby rules:

Articles 282 to 292 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, where a supply, to the same purchaser, comprises two items of immovable property, linked by their nature and coming under a single contract of sale, and the annual turnover limit serving as a reference for the purposes of applying the special scheme for small enterprises provided for by that directive is exceeded, the taxable person is required to pay tax on the basis of the value of the entire supply in question, that is to say, taking into account the value of both the items of property being supplied, even where taking into account the value of one of those items would not lead to that annual limit being exceeded.

[Signatures]